State of Utah
GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson Jr.
Acting Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQP-086-15

June 11, 2015

Shaun McGrath, Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Mr. McGrath:

Enclosed please find for your review one hard copy and one electronic copy of the administrative documentation in support of Governor Herbert's June 4, 2015, State Implementation Plan (SIP) submittal of R307-110-17; R307-110-28; SIP subsections IX.H.21 and 22; and SIP subsection XX.D.6.

If you have questions, please call me at (801) 536-4064.

Sincerely,

Bryce C. Bird
Director

BCB:MB:svw

Enclosures

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STATE OF UTAH

GARY R. HERBERT
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

SPENCER J. COX
LIEUTENANT GOVERNOR

June 4, 2015

Shaun McGrath, Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Mr. McGrath:

Enclosed for your approval are revisions to R307-110-17, *General Requirements: State Implementation Plan. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits; R307-110-28, General Requirements: State Implementation Plan. Regional Haze*; State Implementation Plan (SIP) Sections XX.D.6. *Regional Haze. Long-Term Strategy for Stationary Sources. Best Available Retrofit Technology (BART) Assessment for NOx and PM*; and new SIP Sections IX.H.21 and 22. *General Requirements; Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements*; and *Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology* as adopted by the Utah Air Quality Board on June 3, 2015.

Supporting documentation is being submitted by the Utah Division of Air Quality. If you have questions about this request, please call Bryce Bird, director of the Utah Division of Air Quality, at (801) 536-4064.

Sincerely,

Gary R. Herbert
Governor

Enclosures

UTAH

Administrative Documentation

R 307-110-17. General Requirements: State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits; and R 307-110-28. General Requirements: State Implementation Plan, Section XX, Regional Haze.

State of Utah
Department of Environmental Quality
Division of Air Quality
195 N. 1950 West
P.O. Box 144820
Salt Lake City, Utah 84114-4820

June, 2015

UTAH

ADMINISTRATIVE DOCUMENTATION June 2015

R 307-110-17. General Requirements: State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits; and R 307-110-28. General Requirements: State Implementation Plan, Regional Haze.

ADMINISTRATIVE DOCUMENTATION
Table of Contents

Legal Authority

Chapter 2
Air Conservation Act

Part 1
General Provisions

19-2-101 Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

(1) This chapter is known as the "Air Conservation Act."

(2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.

(4) The purpose of this chapter is to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102 Definitions.

As used in this chapter:

(1) "Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

(2) "Air pollutant source" means private and public sources of emissions of air pollutants.

(3) "Air pollution" means the presence of an air pollutant in the ambient air in the quantities, for a duration, and under the conditions and circumstances that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.

(4) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, actinolite-tremolite, and libby amphibole.

(6) "Asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos.

(7) "Asbestos inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material.

(8) "Board" means the Air Quality Board.
(9) "Clean school bus" means the same as that term is defined in 42 U.S.C. Sec. 16091.
(10) "Director" means the director of the Division of Air Quality.
(11) "Division" means the Division of Air Quality created in Section 19-1-105.
(12) "Friable asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.
(13) "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.

Amended by Chapter 154, 2015 General Session

19-2-103 Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.
(1) The board consists of the following nine members:
(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
(i) the executive director; or
(ii) an employee of the department designated by the executive director; and
(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:
(i) one representative who:
(A) is not connected with industry;
(B) is an expert in air quality matters; and
(C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
(ii) two government representatives who do not represent the federal government;
(iii) one representative from the mining industry;
(iv) one representative from the fuels industry;
(v) one representative from the manufacturing industry;
(vi) one representative from the public who represents:
(A) an environmental nongovernmental organization; or
(B) a nongovernmental organization that represents community interests and does not represent industry interests; and
(vii) one representative from the public who is trained and experienced in public health.
(2) A member of the board shall:
(a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
(b) be a resident of Utah;
(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
(3) No more than five of the appointed members of the board shall belong to the same political party.

(4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.
(5)
(a) Members shall be appointed for a term of four years.
(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
(6) A member may serve more than one term.
(7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
(8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(9) The board shall elect annually a chair and a vice chair from its members.
(10)
(a) The board shall meet at least quarterly.
(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
(c) Three days' notice shall be given to each member of the board before a meeting.
(11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.
(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-104 Powers of board.
(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source;
(b) establishing air quality standards;
(c) requiring persons engaged in operations that result in air pollution to:
(i) install, maintain, and use emission monitoring devices, as the board finds necessary;
(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air pollutant; and
(iii) provide access to records relating to emissions which cause or contribute to air pollution;
(d)
(i) implementing:
(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
(B) 40 C.F.R. Part 763, Asbestos; and
(C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and

(ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;

(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;

(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2);

(i) implementing lead-based paint training, certification, and performance requirements in accordance with 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406; and

(j) to implement the requirements of Section 19-2-107.5.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3)

(a) The board may:

(i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;

(ii) recommend that the director:

(A) issue orders necessary to enforce the provisions of this chapter;

(B) enforce the orders by appropriate administrative and judicial proceedings;

(C) institute judicial proceedings to secure compliance with this chapter; or

(D) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups; and

(iii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of a person who:

(A) receives relevant asbestos training, as defined by rule; and

(B) has acquired a minimum of 1,000 hours of asbestos project monitoring related work experience.

(b) The board shall:

(i) to ensure compliance with applicable statutes and regulations:

(A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of $25,000 or more; and

(B) approve or disapprove the settlement;

(ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(iii) meet the requirements of federal air pollution laws;

(iv) by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish work practice and certification requirements for persons who:

(A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:

(I) the contract work is done on a site other than a residential property with four or fewer units; or

(II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;

(B) conduct work described in Subsection (3)(b)(iv)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(C) conduct asbestos inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

(D) conduct lead-based paint inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

(v) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as an inspector, management planner, abatement project designer, asbestos abatement contractor and supervisor, or an asbestos abatement worker;

(vi) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;

(vii) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Control Act, Subchapter IV - Lead Exposure Reduction, to be accredited as an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust sampling technician; and

(viii) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.

(4) A rule adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

(6)

(a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:

(i) the property's construction was completed before January 1, 1981; or

(ii) the testing is for:

(A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos fiber;

(B) asbestos cement siding or roofing materials;

(C) resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic;

(D) thermal-system insulation or tape on a duct or furnace; or

(E) vermiculite type insulation materials.

(b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(iv) if:

(i) a sample from the property is tested for asbestos; and

(ii) the sample contains asbestos measuring greater than 1%.

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
(a) a permit;
(b) a license;
(c) a registration;
(d) a certification; or
(e) another administrative authorization made by the director.
(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.
(9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 154, 2015 General Session

19-2-105 Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:
(1) the implementation of a standardized inspection and maintenance program;
(2) out-of-state registration of vehicles used in Utah;
(3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
(4) use of the farm truck exemption;
(5) mechanic training programs;
(6) emissions standards; and
(7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3 Clean fuel requirements for fleets.

(1) As used in this section:
(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
(b) "Clean fuel" means:
(i) propane, compressed natural gas, or electricity;
(ii) other fuel the board determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
(iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.
(c) "Fleet" means 10 or more vehicles:
(i) owned or operated by a single entity as defined by board rule; and
(ii) capable of being fueled or that are fueled at a central location.
(d) "Fleet" does not include motor vehicles that are:
(i) held for lease or rental to the general public;
(ii) held for sale or used as demonstration vehicles by motor vehicle dealers;
(iii) used by motor vehicle manufacturers for product evaluations or tests;
(iv) authorized emergency vehicles as defined in Section 41-6a-102;
(v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;
(vi) special mobile equipment as defined in Section 41-1a-102;

(vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;
(viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;
(ix) owned, operated, or leased by public transit districts; or
(x) exempted by board rule.

(2)
(a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
(i) necessary to demonstrate attainment of the national ambient air quality standards in an area where they are required; and
(ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.
(b) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.

(3) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
(a) necessary to demonstrate maintenance of the national ambient air quality standards in an area where they are required; and
(b) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.

(4) Rules the board makes under this section may include:
(a) dates by which fleets are required to convert to clean fuels under the provisions of this section;
(b) definitions of fleet owners or operators;
(c) definitions of vehicles exempted from this section by rule;
(d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and
(e) certification fees for installers, established under Section 63J-1-504.

(5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 154, 2015 General Session

19-2-106 Rulemaking authority and procedure.

(1)
(a) In carrying out the duties of Section 19-2-104, the board may make rules for the purpose of administering a program under the federal Clean Air Act different than the corresponding federal regulations which address the same circumstances if:
(i) the board holds a public comment period, as described in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and a public hearing; and
(ii) the board finds that the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.

(b) The board shall consider the differences between an industry that continuously produces emissions and an industry that episodically produces emissions, and make rules that reflect those differences.

(2) The findings described in Subsection (1)(a)(ii) shall be:

(a) in writing; and

(b) based on evidence, studies, or other information contained in the record that relates to the state of Utah and type of source involved.

(3) In making rules, the board may incorporate by reference corresponding federal regulations.

Amended by Chapter 80, 2015 General Session

19-2-107 Director -- Appointment -- Powers.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2)

(a) The director shall:

(i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;

(ii) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

(iii) review plans, specifications, or other data relative to air pollution control equipment or any part of the air pollution control equipment;

(iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;

(v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;

(viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;

(ix) monitor the effects of the emission of air pollutants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;

(x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;

(xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;

(xii) comply with the requirements of federal air pollution laws;

(xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:

(A) prohibiting or abating discharges of wastes affecting ambient air;

(B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or

(C) adopting other remedial measures to prevent, control, or abate air pollution; and

(xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.

(b) The director may:

(i) employ full-time, temporary, part-time, and contract employees necessary to carry out this chapter;

(ii) subject to the provisions of this chapter, authorize an employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;

(iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement, and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;

(v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;

(vi) subject to Subsection (3), upon request, consult concerning the following with a person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:

(A) the efficacy of proposed air pollution control equipment for the source; or

(B) the air pollution problem that may be related to the source;

(vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;

(viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or

(ix) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to state or federal authorities for tax purposes that air pollution control equipment has been certified in conformity with Title 19, Chapter 12, Pollution Control Act.

(3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 154, 2015 General Session

Superseded 7/1/2015

19-2-107.5 Wood burning.

(1) The division shall create a:

(a) public awareness campaign on the effects of wood burning on air quality, specifically targeting nonattainment areas; and

(b) program to assist an individual to convert a dwelling to a natural gas or other clean fuel heating source, as funding allows, if the individual:

(i) lives in a dwelling where a wood burning stove is the sole source of heat; and

(ii) is on the list of registered sole heating source homes.

(2) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

Enacted by Chapter 230, 2014 General Session

Effective 7/1/2015

19-2-107.5 Solid fuel burning.

(1) The division shall create a:

(a) public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas; and

(b) program to assist an individual to convert a dwelling to a natural gas, propane, or wood pellet heating source or a wood burning stove certified by the United States Environmental Protection Agency, as funding allows, if the individual:

(i) lives in a dwelling where a wood burning stove is the sole source of heat; and

(ii) is on the list of registered sole heating source homes.

(2)

(a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.

(b) Notwithstanding Subsection (2)(a), the division shall:

(i) allow burning during local emergencies and utility outages; and

(ii) provide for exemptions, through registration with the division, for:

(A) devices that are sole sources of heat; or

(B) locations where natural gas service is limited or unavailable.

(3) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

Amended by Chapter 416, 2015 General Session

19-2-108 Notice of construction or modification of installations required -- Authority of director to prohibit construction -- Hearings -- Limitations on authority of director -- Inspections authorized.

(1) Notice shall be given to the director by a person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution, or by a person planning to install an air cleaning device or other equipment intended to control emission of air pollutants.

(2)

(a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as he finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter.

(b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information,

he shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.

(3) In addition to any other remedies but prior to invoking any such other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, shall, upon request, in accordance with the rules of the department, be entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.

(5) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

(6)

(a) An authorized officer, employee, or representative of the director may enter and inspect any property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.

(b)

(i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.

(ii) A person may not obstruct, hamper, or interfere with an inspection.

(c) If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Amended by Chapter 154, 2015 General Session
Amended by Chapter 441, 2015 General Session

19-2-109 Air quality standards -- Hearings on adoption -- Orders of director -- Adoption of emission control requirements.

(1)

(a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.

(b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.

(c) The notice shall be:

(i)

(A) published at least twice in any newspaper of general circulation in the area affected; and

(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 20 days before the public hearing; and

(ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.

(d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.

(e) The order shall be published:

(i) in a newspaper of general circulation in the area affected; and

(ii) as required in Section 45-1-101.

(2)
(a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.
(b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 360, 2012 General Session

19-2-109.1 Operating permit required -- Emissions fee -- Implementation.
(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:
(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
(b) "EPA" means the federal Environmental Protection Agency.
(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.
(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.
(e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.
(2) A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.
(3)
(a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.
(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.
(c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.
(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.
(4)
(a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.
(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.
(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).
(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.
(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.
(5) Emissions fees shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.
(6) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the director may:
(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or
(b) revoke the operating permit.
(7) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (7).
(a) The owner or operator shall pay the fee under protest prior to being entitled to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the fee or penalty under this section.
(b) A request for a hearing under this Subsection (7) shall be made after payment of the emissions fee and within six months after the emissions fee was due.
(8) To reinstate an operating permit revoked under Subsection (6) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.
(9) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.
(10) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or its renewal without additional delay:
(a) the applicant;
(b) a person who participated in the public comment process; or
(c) a person who could obtain judicial review of that action under applicable law.

Amended by Chapter 154, 2015 General Session

19-2-109.2 Small business assistance program.
(1) The division shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.
(2) There is created the Compliance Advisory Panel to advise and monitor the program created in Subsection (1). The seven panel members are:
(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;
(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

(i) one member selected by the majority leader of the Senate;
(ii) one member selected by the minority leader of the Senate;
(iii) one member selected by the majority leader of the House of Representatives; and
(iv) one member selected by the minority leader of the House of Representatives; and
(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.
(3)
(a) Except as required by Subsection (3)(b), as terms of current panel members expire, the department shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of panel members are staggered so that approximately half of the panel is appointed every two years.
(4) Members may serve more than one term.
(5) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.
(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(7) Every two years, the panel shall elect a chair from its members.
(8)
(a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chair, the director, or upon written request of three of the members of the panel.
(b) Three days' notice shall be given to each member of the panel prior to a meeting.
(9) Four members constitute a quorum at a meeting, and the action of the majority of members present is the action of the panel.
(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-109.3 Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-110 Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.

(1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.

(2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.
(3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-2-112 Generalized condition of air pollution creating emergency -- Sources causing imminent danger to health -- Powers of executive director -- Declaration of emergency.
(1)
(a)Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air pollutants.
(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.
(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.
(2)
(a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.
(b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.
(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 154, 2015 General Session

19-2-113 Variances -- Judicial review.
(1)
(a) A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.
(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.
(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
(3) A variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:
(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known

and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b)

(i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.

(4)

(a) A variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5)

(a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air pollutant source is situated.

(6)

(a) The board may review a variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to a person or property.

Amended by Chapter 154, 2015 General Session

19-2-114 Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of a rule made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and
(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index for the area where the burn is to occur is above 500.

Amended by Chapter 154, 2015 General Session

19-2-115 Violations -- Penalties -- Reimbursement for expenses.
(1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.
(2)
(a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed $10,000 per day for each violation.
(b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.
(c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.
(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person knowingly violates any of the following under this chapter:
(a) an applicable standard or limitation;
(b) a permit condition; or
(c) a fee or filing requirement.
(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation who knowingly:
(a) makes any false material statement, representation, or certification, in any notice or report required by permit; or
(b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.
(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.
(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.
(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation in the case of the first offense, and not more than $50,000 per day of violation in the case of subsequent offenses.
(8)
(a) As used in this section:
(i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

(ii) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b)

(i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person with criminal negligence:

(A) releases into the ambient air any hazardous air pollutant; and

(B) places another person in imminent danger of death or serious bodily injury.

(ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.

(c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $50,000 per day of violation if that person:

(i) knowingly releases into the ambient air any hazardous air pollutant; and

(ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.

(d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than $1,000,000.

(e)

(i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(f)

(i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

(9)

(a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116 Injunction or other remedies to prevent violations -- Civil actions not abridged.
(1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.
(2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.
(3)
(a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:
(i) upon failure of any person to comply with:
(A) any provision of this chapter;
(B) any rule adopted under this chapter; or
(C) any final order made by the board, the director, or the executive director; and
(ii) when it appears necessary for the protection of health and welfare.
(b) The attorney general shall bring injunctive relief actions on request.
(c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117 Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.
(1) Except as provided in Section 63G-7-902, the attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.
(2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring an action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under this chapter.
(3) The director may bring an action and be represented by the attorney general.
(4) In the event a person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 154, 2015 General Session

19-2-118 Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119 Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.

(1) Existing civil or criminal remedies for a wrongful action that is a violation of the law are not excluded by this chapter.

(2) Except as provided in Sections 19-1-301 and 19-1-301.5, and rules implementing those provisions, persons other than the state or the board do not acquire actionable rights by virtue of this chapter.

(3) The liabilities imposed for violation of this chapter are not imposed for a violation caused by an act of God, war, strike, riot, or other catastrophe.

Amended by Chapter 154, 2015 General Session

19-2-120 Information required of owners or operators of air pollutant sources.

The owner or operator of a stationary air pollutant source in the state shall furnish to the director the reports required by rules made in accordance with Section 19-2-104 and any other information the director finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the division.

Amended by Chapter 154, 2015 General Session

19-2-121 Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-122 Cooperative agreements between political subdivisions and department.

(1) A political subdivision of the state may enter into and perform, with other political subdivisions of the state or with the department, contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.

(2) The agreements may provide for an agency to:

(a) supervise and operate an air pollution program;

(b) prescribe the agency's powers and duties; and

(c) fix the compensation of the agency's members and employees.

Amended by Chapter 154, 2015 General Session

Part 2
Clean Air Retrofit, Replacement, and Off-road Technology Program

19-2-201 Title.

This part is known as the "Clean Air Retrofit, Replacement, and Off-road Technology Program."

Enacted by Chapter 295, 2014 General Session

19-2-202 Definitions.

As used in this part:

(1) "Board" means the Air Quality Board.

(2) "Certified" means certified by the United States Environmental Protection Agency or the California Air Resources Board to meet appropriate emission standards.

(3) "Cost" means the total reasonable cost of a project eligible for a grant under the fund, including the cost of labor.

(4) "Director" means the director of the Division of Air Quality.

(5) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).

(6) "Eligible equipment" means equipment with engines, including stationary generators and pumps, operated and, if applicable, permitted in Utah.

(7) "Eligible vehicle" means a vehicle operated and, if applicable, registered in Utah that is:

(a) a medium-duty or heavy-duty transit bus;

(b) a school bus as defined in Subsection 53-3-102(33);

(c) a medium-duty or heavy-duty truck with a gross vehicle weight rating of at least 16,001 GVWR;

(d) a locomotive; or

(e) another type of vehicle identified by the board in rule as being a significant potential source of air pollution, as defined in Subsection 19-2-102(3).

(8) "Verified" means verified by the United States Environmental Protection Agency or the California Air Resources Board to reduce air emissions and meet durability requirements.

Enacted by Chapter 295, 2014 General Session

19-2-203 Grants and programs -- Conditions.

(1) The director may make grants for implementing:

(a) verified technologies for eligible vehicles or equipment; and

(b) certified vehicles, engines, or equipment.

(2)

(a) The division may develop programs, including exchange, rebate, or low-cost purchase programs, to encourage replacement of:

(i) landscaping and maintenance equipment with equipment that is lower in emissions; and

(ii) other equipment or products identified by the board in rule as being a significant potential source of air pollution, as defined in Subsection 19-2-102(3).

(b) The division may enter into agreements with local health departments to administer the programs described in Subsection (2)(a).

(3) As a condition for receiving the grant, a person receiving a grant under Subsection (1) or receiving a grant under this Subsection (3) shall agree to:

(a) provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;

(b) allow inspections by the division to ensure compliance with the terms of the grant;

(c) permanently disable replaced vehicles, engines, and equipment from use; and

(d) comply with the conditions for the grant.
(4) Grants and programs under Subsections (1) and (2) may be administered using a rebate program.
(5) Grants issued under this section may not exceed the actual cost of the project.

Enacted by Chapter 295, 2014 General Session

19-2-204 Duties and authorities -- Rulemaking.
(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
(a) specifying the amount of money to be dedicated annually for grants;
(b) specifying criteria the director shall consider in prioritizing and awarding grants, including:
(i) a preference for awarding a grant to an individual who has already secured some other source of funding; and
(ii) a limitation on the types of vehicles that are eligible for funds;
(c) specifying the terms of a grant or exchange under Subsections 19-2-203(2), (3), and (4);
(d) specifying the procedures to be used in the grant and exchange programs authorized in Subsections 19-2-203(2), (3), and (5); and
(e) requiring all grant applicants to apply on forms provided by the division.
(2) The division shall:
(a) administer funds to encourage vehicle and equipment owners and operators to reduce emissions from vehicles and equipment;
(b) provide forms for application for a grant or exchange under Subsection 19-2-203(2) or (3); and
(c) provide information about which vehicles, engines, or equipment are certified and which technology is verified as provided in this part.
(3) The division may inspect vehicles, equipment, or technology for which a grant was made to ensure compliance with the terms of the grant.

Enacted by Chapter 295, 2014 General Session

Part 3
Conversion to Alternative Fuel Grant Program

19-2-301 Title.
This part is known as the "Conversion to Alternative Fuel Grant Program."

Enacted by Chapter 381, 2015 General Session

19-2-302 Definitions.
As used in this part:
(1) "Air quality standards" means vehicle emission standards equal to or greater than the standards established in bin 4 in Table S04-1 of 40 C.F.R. 86.1811-04(c)(6).
(2) "Alternative fuel" means:
(a) propane, natural gas, or electricity; or
(b) other fuel that the board determines, by rule, to be:

(i) at least as effective in reducing air pollution as the fuels listed in Subsection (2)(a); or
(ii) substantially more effective in reducing air pollution as the fuel for which the engine was originally designed.
(3) "Board" means the Air Quality Board.
(4) "Clean fuel grant" means a grant awarded under Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act, for reimbursement for a portion of the incremental cost of an OEM vehicle or the cost of conversion equipment.
(5) "Conversion equipment" means equipment designed to:
(a) allow an eligible vehicle to operate on an alternative fuel; and
(b) reduce an eligible vehicle's emissions of regulated pollutants, as demonstrated by:
(i) certification of the conversion equipment by the Environmental Protection Agency or by a state or country that has certification standards that are recognized, by rule, by the board;
(ii) testing the eligible vehicle, before and after the installation of the equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-Use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using;
(iii) for a retrofit natural gas vehicle that is retrofit in accordance with Section 19-1-406, satisfying the emission standards described in Section 19-1-406; or
(iv) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(6) "Cost" means the total reasonable cost of a conversion kit and the paid labor, if any, required to install it.
(7) "Director" means the director of the Division of Air Quality.
(8) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).
(9) "Eligible vehicle" means a:
(a) commercial vehicle, as defined in Section 41-1a-102;
(b) farm tractor, as defined in Section 41-1a-102; or
(c) motor vehicle, as defined in Section 41-1a-102.

Enacted by Chapter 381, 2015 General Session

19-2-303 Grants and programs -- Conditions.
(1) The director may make grants to a person who installs conversion equipment on an eligible vehicle as described in this part.
(2) A person who installs conversion equipment on an eligible vehicle:
(a) may apply to the division for a grant to offset the cost of installation; and
(b) shall pass along any savings on the cost of conversion equipment to the owner of the eligible vehicle being converted in the amount of grant money received.
(3) As a condition for receiving the grant, a person who installs conversion equipment shall agree to:
(a) provide information to the division about the eligible vehicle to be converted with the grant proceeds;
(b) allow inspections by the division to ensure compliance with the terms of the grant; and
(c) comply with the conditions for the grant.
(4) A grant issued under this section may not exceed the lesser of 50% of the cost of the conversion system and associated labor, or $2,500, per converted eligible vehicle.

Enacted by Chapter 381, 2015 General Session

19-2-304 Duties and authorities -- Rulemaking.

(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
  (a) specifying the amount of money to be dedicated annually for grants under this part;
  (b) specifying criteria the director shall consider in prioritizing and awarding grants, including a limitation on the types of vehicles that are eligible for funds;
  (c) specifying the minimum qualifications of a person who:
    (i) installs conversion equipment on an eligible vehicle; and
    (ii) receives a grant from the division;
  (d) specifying the terms of a grant; and
  (e) requiring all grant applicants to apply on forms provided by the division.
(2) The division shall:
  (a) administer funds to encourage eligible vehicle owners to reduce emissions from eligible vehicles; and
  (b) provide information about which conversion technology meets the requirements of this part.
(3) The division may inspect vehicles for which a grant was made to ensure compliance with the terms of the grant.

Enacted by Chapter 381, 2015 General Session

19-2-305 Limitation on applying for a tax credit.

An owner of an eligible vehicle who receives the savings on the cost of conversion equipment, as described in Subsection 19-2-303(2)(b), may not claim a tax credit for the conversion under Section 59-7-605 or 59-10-1009 unless the savings are less than the tax credit authorized by those sections, in which case the owner may claim a tax credit in the amount of the difference.

Enacted by Chapter 381, 2015 General Session

Chapter 3
Utah Administrative Rulemaking Act

Part 1
General Provisions

63G-3-101 Title.

This chapter is known as the "Utah Administrative Rulemaking Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-102 Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:
  (a) the proposed rule, change in the proposed rule, and the rule analysis form;
  (b) the public comment received and recorded by the agency during the public comment period;
  (c) the agency's response to the public comment;
  (d) the agency's analysis of the public comment; and
  (e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9)
  (a) "File" means to submit a document to the division as prescribed by the division.
  (b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

(14) "Publication date" means the inscribed date of the bulletin.

(15) "Register" may include an electronic database.

(16)
(a) "Rule" means an agency's written statement that:
(i) is explicitly or implicitly required by state or federal statute or other applicable law;
(ii) implements or interprets a state or federal legal mandate; and
(iii) applies to a class of persons or another agency.
(b) "Rule" includes the amendment or repeal of an existing rule.
(c) "Rule" does not mean:
(i) orders;
(ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
(iii) the governor's executive orders or proclamations;
(iv) opinions issued by the attorney general's office;
(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;
(vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or
(vii) an agency written statement that is in violation of any state or federal law.
(17) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.
(18) "Small business" means a business employing fewer than 50 persons.
(19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Circumstances Requiring Rulemaking - Status of Administrative Rules

63G-3-201 When rulemaking is required.
(1) Each agency shall:
(a) maintain a current version of its rules; and
(b) make it available to the public for inspection during its regular business hours.
(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
(a) authorizes, requires, or prohibits an action;
(b) provides or prohibits a material benefit;
(c) applies to a class of persons or another agency; and
(d) is explicitly or implicitly authorized by statute.
(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.
(4) Rulemaking is not required when:
(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;
(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.

(5)

(a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).

(b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).

(c) A violation of a rule may be subject to a class C or greater criminal penalty under Subsection (5)(a) when:

(i) authorized by a specific state statute;

(ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or

(iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7)

(a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the division.

(8)

(a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Amended by Chapter 347, 2009 General Session

63G-3-202 Rules having the effect of law.

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3
Rulemaking Procedures

63G-3-301 Rulemaking procedure.

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the division to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4)

(a) Each agency shall file its proposed rule and rule analysis with the division.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c)

(i) The division shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(5) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

(a) establishing less stringent compliance or reporting requirements for small businesses;

(b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) consolidating or simplifying compliance or reporting requirements for small businesses;

(d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and

(e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments;

(iii) small businesses; and

(iv) persons other than small businesses, businesses, or local governmental entities;

(e) the compliance cost for affected persons;

(f) how interested persons may review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period; and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

(9)

(a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

(a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

(a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.
(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.
(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.
(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.
(13)
(a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.
(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).
(c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.
(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 93, 2009 General Session

63G-3-302 Public hearings.
(1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
(2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
(a) a public hearing is required by state or federal mandate;
(b)
(i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
(ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
(3) The agency shall hold the hearing:
(a) before the rule becomes effective; and
(b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-303 Changes in rules.
(1)
(a) To change a proposed rule already published in the bulletin, an agency shall file with the division:
(i) the text of the changed rule; and

(ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The division shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

(a) the agency need not comply with the requirements of Subsection (1); and

(b) the agency shall notify the division of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-304 Emergency rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements; or

(c) place the agency in violation of federal or state law.

(2)

(a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

(i) the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).

(c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 300, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

(1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.

(2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).

(3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.

(a) If the agency continues the rule, the agency shall file with the division a five-year notice of review and statement of continuation that includes:

(i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;

(ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and

(iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

(b) If the agency repeals the rule, the agency shall:

(i) comply with Section 63G-3-301; and

(ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.

(c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the division the five-year notice of review and statement of continuation required in Subsection (3)(a).

(4) The division shall publish a five-year notice of review and statement of continuation in the bulletin no later than one year after the deadline described in Subsection (1).

(5)

(a) The division shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).

(b) The division's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.

(6) If an agency finds that it will not meet the deadline established in Subsection (1):

(a) before the deadline described in Subsection (1), the agency may file one extension with the division indicating the reason for the extension; and

(b) the division shall publish notice of the extension in the bulletin in accordance with the division's publication schedule established by division rule under Section 63G-3-402.

(7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).

(8)

(a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.

(b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.

(9) After a rule expires under Subsection (8), the division shall:

(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;

(b) remove the rule from the code; and

(c) notify the agency that the rule has expired.

(10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 57, 2014 General Session

Part 4
Division of Administrative Rules

63G-3-401 Division of Administrative Rules created -- Appointment of director.

(1) There is created within the Department of Administrative Services the Division of Administrative Rules, to be administered by a director.

(2) The director of administrative rules shall be appointed by the executive director with the approval of the governor.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-402 Division of Administrative Rules -- Duties generally.

(1) The Division of Administrative Rules shall:

(a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;

(b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to the text maintained by the division;

(e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

(f) publish a digest of all rules and notices contained in the most recent bulletin;

(g) publish at least annually an index of all changes to the administrative code and the effective date of each change;

(h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

(i) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(j) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(k) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;

(l) provide agencies assistance in rulemaking;

(m) if the Department of Administrative Services operates the division as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee; and

(n) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:

(a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;

(b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(d) updating or correcting annotations associated with a section, part, rule, or title; and

(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

(a) eliminate duplication within rules;

(b) eliminate obsolete and redundant words; and

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

(a) the affected code citation;

(b) a brief description of the change; and

(c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

Amended by Chapter 341, 2010 General Session

63G-3-403 Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

(a) reorganize, reformat, and renumber the code;

(b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and

(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

(b) eliminating duplication;

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;

(d) eliminating all obsolete or redundant words;

(e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
(g) updating or correcting annotations associated with a section, part, rule, or title; and
(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4)
(a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:
(i) notice of the code reenactment;
(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
(iii) locations where the proposed reenactment of the code may be reviewed; and
(iv) agency summaries of substantive changes in the reenacted code.
(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:
(i) make the text of their reenacted rules available:
(A) for public review during regular business hours; and
(B) in an electronic version; and
(ii) comply with the requirements of Subsection 63G-3-301(10).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

(6) The division shall distribute complete text of the proposed code reenactment without charge to:
(a) state-designated repositories in Utah;
(b) the Administrative Rules Review Committee; and
(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

Amended by Chapter 300, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

Part 5
Legislative Oversight

63G-3-501 Administrative Rules Review Committee.

(1)
(a) There is created an Administrative Rules Review Committee of the following 10 permanent members:
(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and
(ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.
(b) Each permanent member shall serve:

(i) for a two-year term; or
(ii) until the permanent member's successor is appointed.
(c)
(i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.
(ii) When a vacancy exists:
(A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or
(B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.
(iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.
(d)
(i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.
(ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.
(e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.
(f)
(i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.
(ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.
(2) The division shall submit a copy of each issue of the bulletin to the committee.
(3)
(a) The committee shall exercise continuous oversight of the rulemaking process.
(b) The committee shall examine each rule submitted by an agency to determine:
(i) whether the rule is authorized by statute;
(ii) whether the rule complies with legislative intent;
(iii) the rule's impact on the economy and the government operations of the state and local political subdivisions; and
(iv) the rule's impact on affected persons.
(c) To carry out these duties, the committee may examine any other issues that the committee considers necessary. The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.
(d) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.
(4) When the committee reviews existing rules, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.
(5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.

(7)

(a) The committee may prepare written findings of the committee's review of a rule and may include any recommendations, including legislative action.

(b) When the committee reviews a rule, the committee shall provide to the agency that enacted the rule:

(i) the committee's findings, if any; and

(ii) a request that the agency notify the committee of any changes the agency makes to the rule.

(c) The committee shall provide a copy of the committee's findings, if any, to:

(i) any member of the Legislature, upon request;

(ii) any person affected by the rule, upon request;

(iii) the president of the Senate;

(iv) the speaker of the House of Representatives;

(v) the Senate and House chairs of the standing committee that has jurisdiction over the agency that made the rule; and

(vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.

(8)

(a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

(i) any findings and recommendations the committee made under Subsection (7);

(ii) any action an agency took in response to committee recommendations; and

(iii) any recommendations by the committee for legislation.

Amended by Chapter 383, 2015 General Session

63G-3-502 Legislative reauthorization of agency rules -- Extension of rules by governor.

(1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.

(2)

(a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.

(b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:

(i) the rule is explicitly mandated by a federal law or regulation; or

(ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.

(3)

(a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.

(b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".

(c) Before sending the legislation to the governor for the governor's action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.

(d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.

(4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.

(5)

(a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

(i) that the rule is necessary; and

(ii) a citation to the source of its authority to make the rule.

(c)

(i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

Renumbered and Amended by Chapter 382, 2008 General Session

Part 6
Judicial Review

63G-3-601 Interested parties -- Petition for agency action.

(1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.

(2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.

(3) The division shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

(6)

(a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.

(b) Within 80 days of the submission of the petition, the board shall either:

(i) deny the petition in writing stating its reasons for denial; or

(ii) initiate rulemaking proceedings.

(7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district court.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-602 Judicial challenge to administrative rules.

(1)

(a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2)

(a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or

(iii) compliance with Section 63G-3-601 would cause the person irreparable harm.

(3)

(a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) the text of the rule or proposed rule, if any;

(v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b)

(i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.
(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.
(4) The district court may grant relief to the petitioner by:
(a) declaring the rule invalid, if the court finds that:
(i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;
(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
(iii) the agency did not follow proper rulemaking procedure;
(b) declaring the rule nonapplicable to the petitioner;
(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
(d) ordering the agency to comply with Section 63G-3-201;
(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
(f) any combination of Subsections (4)(a) through (e).
(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-603 Time for contesting a rule -- Statute of limitations.
(1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.
(2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.
(3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7
Official Compilation of Administrative Rules

63G-3-701 Utah Administrative Code as official compilation of rules -- Judicial notice.
The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-702 Utah Administrative Code -- Organization -- Official compilation.

(1) The Utah Administrative Code shall be divided into three parts:
  (a) titles, whose number shall begin with "R";
  (b) rules; and
  (c) sections.
(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.
(3) The division shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the division is considered the correct, current version.

Renumbered and Amended by Chapter 382, 2008 General Session

R15. Administrative Services, Administrative Rules.
R15-1. Administrative Rule Hearings.
R15-1-1. Authority.

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) In addition:

(a) "hearing" means an administrative rule hearing; and

(b) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63G-3-601.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for

a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

KEY: administrative law, government hearings
Date of Enactment or Last Substantive Amendment: June 1, 1996
Notice of Continuation: September 21, 2010
Authorizing, and Implemented or Interpreted Law: 63G-3-402

R15. Administrative Services, Administrative Rules.
R15-2. Public Petitioning for Rulemaking.
R15-2-1. Authority.

As required by Subsection 63G-3-601(3), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.
(2) Other terms are defined as follows:
(a) "rule change" means:
(i) making a new rule;
(ii) amending, repealing, or repealing and reenacting an existing rule;
(iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;
(iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
(v) any combination of the above.
(b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

R15-2-3. Petition Procedure.

(1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.
(2) The agency receiving the petition shall record the date it received the petition.

R15-2-4. Petition Form.

The petition shall:
(a) be clearly designated "petition for a rule change";
(b) state the petitioner's name;
(c) state the petitioner's interest in the rule, including relevant affiliation, if any;
(d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;
(e) state the approximate wording of the requested rule change;
(f) describe the reason for the rule change;
(g) include an address, an E-mail address when available, and telephone where the petitioner can be reached during regular business hours; and
(h) be signed by the petitioner.

R15-2-5. Petition Consideration And Disposition.

(1) The agency head or designee shall:
(a) review and consider the petition;
(b) write a response to the petition stating:
(i) that the petition is denied and reasons for denial, or
(ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
(c) send the response to the petitioner within the time frame provided by Section 63G-3-601.
(2) The petitioned agency may, within the time frame provided

by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.

(3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.

(4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

KEY: administrative law, open government, transparency
December 25, 2006 **63G-3-601**
Notice of Continuation September 21, 2010

R15. Administrative Services, Administrative Rules.
R15-3. Definitional Clarification of Administrative Rule.
R15-3-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 63G-3-402(1) which requires the division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63G-3-102.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).

(4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The division has authority over nonsubstantive content under Subsections 63G-3-402(2) and (3), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

(1) All rules shall be in a format that permits their

compatibility with the division's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The division shall issue and provide to agencies instructions and standards for formatting rules.

R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(13).

For the purposes of Subsection 63G-3-301(13), the phrase "statutory provision that requires the rulemaking" means a state statutory provision that explicitly mandates rulemaking.

KEY: administrative law
April 30, 2007 **63G-3-201**
Notice of Continuation September 21, 2010 **63G-3-301**
63G-3-402

R15. Administrative Services, Administrative Rules.
R15-4. Administrative Rulemaking Procedures.
R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "eRules" means the Division's administrative rule filing application that agencies use to file rules and notices;

(g) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63G-3-301(2) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period for a Proposed Rule and a Change in Proposed Rule.

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

R15-4-5a. Notice of the Effective Date for a Proposed Rule.

(1)(a) Pursuant to Subsection 63G-3-301(9), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that

the rule text as published is the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the division or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.

(4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63G-3-303, agencies shall comply with

the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63G-3-102(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63G-3-303(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The division interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the

two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63G-3-301(3), 63G-3-303(1), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental

compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

KEY: administrative law
August 24, 2007
Notice of Continuation September 21, 2010

63G-3-301
63G-3-303
63G-3-304
63G-3-402

R15. Administrative Services, Administrative Rules.
R15-5. Administrative Rules Adjudicative Proceedings.
R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request

a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63G-3-603.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the division determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedures, administrative law
June 1, 1996 **63G-3-402**
Notice of Continuation September 22, 2010 **63G-4-202**
63G-4-203
63G-4-503

Proposed for Public Comment

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on [~~December 3, 2014~~]June 3, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on [~~April 6, 2011~~]June 3, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Enactment or Last Substantive Amendment: [~~January 9, 2014~~]2015
Notice of Continuation: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(e)

Utah State Implementation Plan

Section XX

Regional Haze

Addressing Regional Haze Visibility Protection for the Mandatory Federal Class I Areas Required Under 40 CFR 51.309

Adopted by the Air Quality Board
[~~April 6, 2011~~]June 3, 2015

1

6. Best Available [~~Control~~]Retrofit Technology (BART) Assessment for NO_x and PM.

a. Regional Haze Rule BART Requirements

Pursuant to 40 CFR 51.309(d)(4)(vii), certain major stationary sources are required to evaluate, install, operate and maintain BART technology or an approved BART alternative for NO_x and PM emissions. [~~BART requirements can be addressed through a case-by-case review under 40 CFR 51.308(e)(1) or through an alternative program under 40 CFR 51.308(e)(2).~~]The State of Utah has chosen to evaluate BART for [~~NO_x and~~]PM under the case-by-case provisions of 40 CFR 51.308(e)(1) and BART for NOx through alternative measures under 40 CFR 51.308(e)(2). BART for SO_2 is addressed through an alternative program under 40 CFR 51.309 that is described in Part E of this plan.

b. BART for Particulate Matter

EPA issued guidelines for case-by-case BART determinations on July 6, 2005 that are codified in Appendix Y to 40 CFR Part 51. These guidelines establish a three step process.

- States identify sources which meet the definition of BART eligible
- States determine which BART eligible sources are "subject to BART"
- For each source subject to BART States identify the appropriate control technology.

[~~The determination of NO_x limits for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts must be made pursuant to the guidelines in 40 CFR 51 Appendix Y, Section E.5.~~ [1]]

[~~CFR Part 51 Appendix Y Guidelines for BART Determinations under the Regional Haze Rule (70 FR 39158)~~]

(1) BART-Eligible Sources.

BART-eligible sources are those sources that fall within one of 26 specific source categories, were built during the 15-year window of time from 1962 to 1977, and have potential emissions of at least 250 tons per year of any visibility impairing air pollutant (40 CFR 51.301). Pursuant to 40 CFR 51.308 (e)(1)(i) a State is required to list all BART-eligible sources within the State.

Four BART-eligible electric generating units have been identified in the State of Utah: PacifiCorp's Hunter Units 1 and 2 and Huntington Units 1 and 2. The units are located at fossil-fuel fired steam electric plants of more than 250 million Btu per hour heat input, one of the 26 specific BART source categories. The units have potential emissions greater than 250 tons per year of a visibility impairing pollutant. The units had commenced construction within the BART time frame of August 7, 1962 to August 7, 1977.

Table 3. BART-Eligible Sources in Utah.

SOURCE	UNIT ID	SERVICE DATE	NET DEPENDABLE CAPACITY (MWn)	BART CATEGORY	COAL TYPE	BOILER TYPE
Hunter	1	1978	430	Fossil fuel fired	Bituminous	Tangential
Hunter	2	1980	430	Fossil fuel fired	Bituminous	Tangential
Huntington	1	1977	430	Fossil fuel fired	Bituminous	Tangential
Huntington	2	1974	430	Fossil fuel fired	Bituminous	Tangential

Note: Hunter Unit 3 commenced construction after 1977 and is therefore not BART-eligible.

(2) Sources Subject to BART

Pursuant to 40 CFR 51.308(e)(1)(ii) the State is required to determine which BART-eligible sources are also "subject to BART." BART-eligible sources are subject to BART if they emit any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.

PacifiCorp's Hunter Units 1 and 2 and Huntington Units 1 and 2 were determined by the State to be subject to BART. The State utilized the technical modeling services of the WRAP Regional Modeling Center (RMC). Modeling was performed according to the RMC modeling protocols[2]. For the WRAP BART exemption screening modeling, the RMC followed the EPA BART Guidelines in 40 CFR 51, Appendix Y and the applicable CALMET/CALPUFF modeling guidance (e.g., IWAQM, 1998; FLAG, 2000; EPA,

[2] CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States

2003c) including EPA's March 16, 2006 memorandum: "Dispersion Coefficients for Regulatory Air Quality Modeling in CALPUFF".[3]

The basic assumptions of the WRAP BART CALMET/CALPUFF modeling protocols are as follows:

- Three years of modeling (2001, 2002 and 2003) were used.
- Visibility impacts due to emissions of SO_2, NO_x and primary PM emissions were calculated
- Visibility was calculated using the Original IMPROVE equation and Annual Average Natural Conditions.
- The effective range of CALPUFF modeling was set at 300km from the sources
- For pre-control modeling, maximum 24-hour average actual emissions from the Acid Rain database were used in CALPUFF model.
- ~~[For post-control modeling, expected New Source Review (NSR) permitted limits were used in the CALPUFF model.]~~

According to 40 CFR Part 51, Appendix Y, a BART-eligible source is considered to "contribute" to visibility impairment in a Class I area if the modeled 98th percentile change in deciviews is equal to or greater than the "contribution threshold." The State of Utah evaluated BART exemption screening modeling results at the EPA-suggested contribution threshold of 0.5 deciviews within a 300 Km radius of the BART-eligible sources.[4] BART-eligible sources Hunter Unit 1, Hunter Unit 2, Huntington Unit 1, and Huntington Unit 2 had a modeled impact greater than the threshold level of 0.5 change in deciviews in at least one of the seven Class I areas within a 300 km radius of the sources.

[3] Atkinson and Fox, 2006

[4] WRAP RMC BART Modeling for Utah Draft #6 April 21, 2007

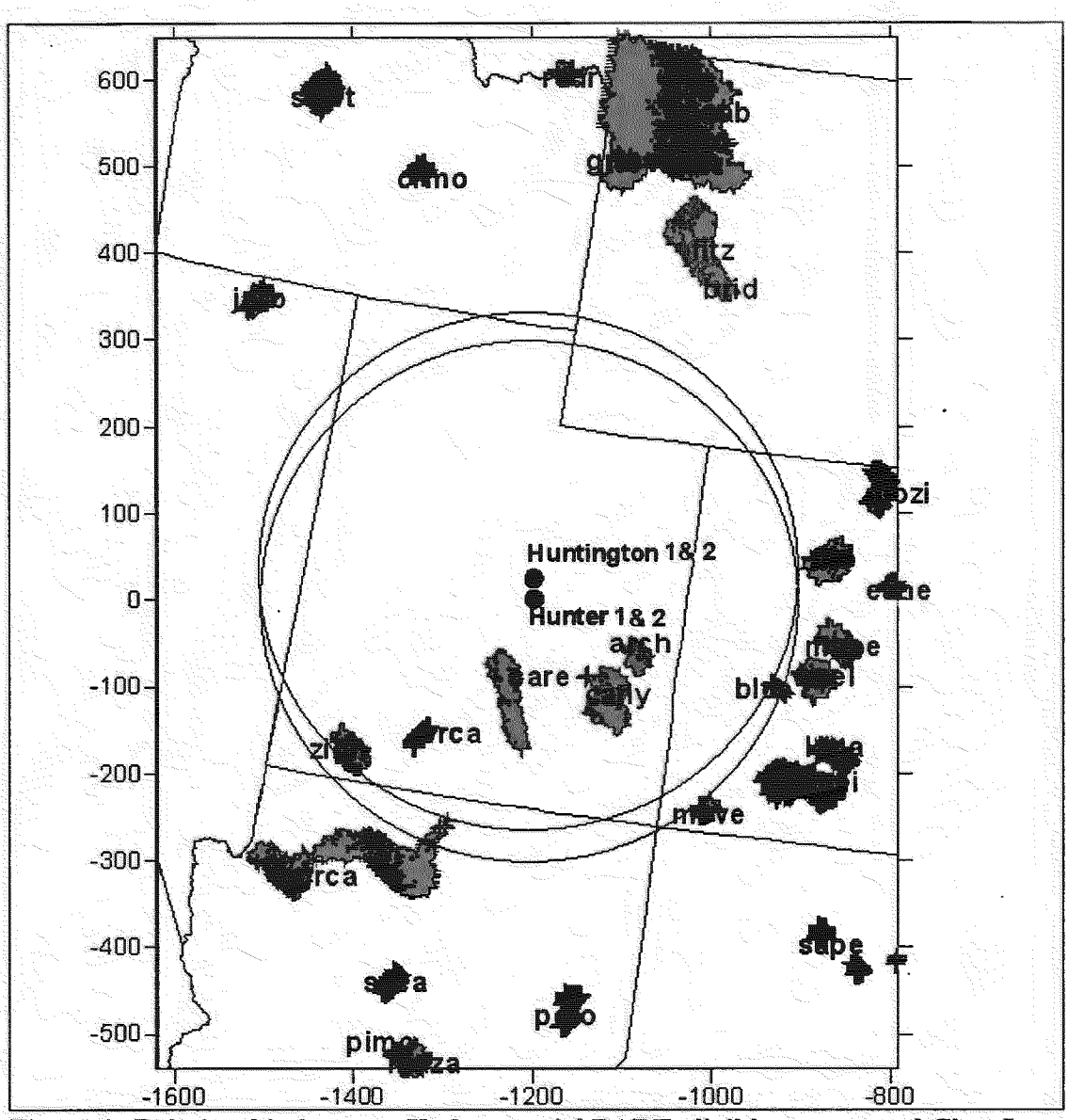

Figure 4. Relationship between Utah potential BART-eligible sources and Class I areas. Hunter Units 1 and 2 and Huntington Units 1 and 2 modeled separately at maximum 300 km.

Table 4. Subject to BART Modeling

	Subject to BART Modeling - 98th Percentile 3 year average Delta Deciview							
	Capitol Reef	Canyonlands	Arches	Bryce Canyon	Zion	Grand Canyon	Black Canyon Gunnison	Mesa Verde
Hunter 1	2.13	1.87	1.53	0.55	0.46	0.59	0.60	0.53
Hunter 2	1.89	1.62	1.36	0.47	0.41	0.52	0.53	0.47
Huntington 1	1.92	1.64	1.39	0.48	0.43	0.55	0.56	0.48
Huntington 2	2.43	2.26	1.89	.091	.078	.099	1.14	0.91

(3) BART [~~Determination~~]Analysis

As required under 51.308 (e)(1)(A) the determination of BART must be based on an analysis of the best system of continuous emission control technology available. In the analysis the State must take in to account five factors:

- Available technology
- Costs of compliance
- Energy and non-air quality environmental impacts
- Existing control equipment and the remaining useful life of the facility
- The degree of improvement in visibility reasonably anticipated to result from the use of such technology

In 2008, Utah determined that BART for PM was the replacement of existing electrostatic precipitators with pulse-jet fabric filter baghouses with a PM emission limit of 0.015 lb/MMBtu at all four EGUs that were subject-to-BART. PacifiCorp installed the control technology, as required, and significant emission reductions of PM were achieved. On December 12, 2012, the EPA disapproved Utah's BART determination for PM after concluding that Utah did not submit an adequate 5-factor analysis as required by the BART Rule. In June 2012, PacifiCorp provided a new 5-factor analysis for each of the four subject to BART EGUs. On August 4, 2014, PacifiCorp provided additional information to supplement that analysis. DAQ reviewed the analysis, and determined that the required controls for PM were the most stringent controls available.

(4) BART Determination for PM

Appendix Y allows a streamlined 5-factor analysis when the most stringent controls are already required.

> "If you find that a BART source has controls already in place which are the most stringent controls available (note that this means that all possible improvements to any control devices have been made), then it is not necessary to comprehensively complete each following step of the BART analysis in this section. As long as these most stringent controls available are made federally enforceable for the purpose of implementing BART for that source, you may skip the remaining analyses in this section, including the visibility analysis in step 5. Likewise, if a source commits to a BART determination that consists of the most stringent controls available, then there is no need to complete the remaining analyses in this section." (40 CFR Part 51, Appendix Y, Section D.9)

Because the most stringent technology is in place and the PM emission limits have been made enforceable in SIP Section IX Part H.21 and H.22, no further analysis is required.

c. BART for NOx

BART for NOx is addressed through alternative measures as provided under 40 CFR 51.308(e)(2). The following emission reduction measures are required, and are made enforceable through emission limits established in Section IX, Part H.21 and H.22 of the State Implementation Plan.

- PacifiCorp Hunter Units 1 and 2 and Huntington Units 1 and 2: The replacement of first generation low-NO_x burners with Alstom TSF 2000TM low-NO_x firing system and installation of two elevations of separated overfire air with an emission limit of 0.26 lb/MMBtu.

- PacifiCorp Hunter Unit 3 (not subject-to-BART): The replacement of first generation low-NOx burners with improved low-NOx burners with overfire air with an emission limit of 0.34 lb/MMBtu.

- PacifiCorp Carbon Units 1 and 2 (not subject-to-BART): PacifiCorp shall permanently retire Carbon Units 1 and 2 by August 15, 2015.

40 CFR 51.308(e)(2) requires an analysis to demonstrate that the alternative measures achieve greater reasonable progress than would be achieved through the installation and operation of BART. This demonstration is included in the TSD[5]. Combined emissions of NOx, SO_2, and PM_{10} will be 2,876 tons/yr lower under the alternative than the most-stringent BART scenario for NOx, visibility will improve on a greater number of days under the alternative, and the average deciview impairment and 90th percentile deciview impairment will be better under the alternative.

d. BART Summary

The BART emission limits for NOx and PM are summarized in Table 5. While Utah has chosen to meet the NOx BART requirement through alternative measures established in Section XX Part D.6 of the SIP, and the SO_2 BART requirement through an alternative to BART program established in Section XX Part E of the SIP, the enforceable emission limits for both NOx and SO_2 established in the approval orders and in the SIP for the four EGUs also meet the presumptive emission rates for both NOx and SO_2 established in Appendix Y independently of the alternative programs.

[5] Review of 2008 BART Determination and Recommended Alternative to BART for NOx, Utah Division of Air Quality, February 13, 2015.

Table 5. Emission Limits for the Retrofitted Hunter and Huntington Units

Units	Utah Permitted Limits[6]			Presumptive BART Rates[7]	
	SO_2 lb/MMBtu	NOx lb/MMBtu	PM lb/MMBtu	SO_2 lb/MMBtu	NO_x lb/MMBtu
Hunter 1	0.12	0.26	0.015	0.15	0.28
Hunter 2	0.12	0.26	0.015	0.15	0.28
Hunter 3		0.34			
Huntington 1	0.12	0.26	0.015	0.15	0.28
Huntington 2	0.12	0.26	0.015	0.15	0.28

~~[PacifiCorp has installed or has received permits to install the following retrofit control equipment at the Hunter Unit 1, Hunter Unit 2, Huntington Unit 1, and Huntington Unit 2 fossil fuel fired electric generating units (EGU):]~~

~~Hunter Units 1 and 2:~~

- ~~Conversion of existing electrostatic precipitators to pulse jet fabric filter bag-houses~~
- ~~The replacement of existing, first generation low-NO_x burners with Alstom TSF 2000TM low-NO_x firing system and installation of two elevations of separated overfire air.~~
- ~~Upgrade of existing flue gas desulfurization system to > 90% sulfur dioxide removal.~~

~~Huntington Units 1 and 2:~~

- ~~Conversion of existing electrostatic precipitators to pulse jet fabric filter bag-houses~~
- ~~The replacement of existing, first generation low-NO_x burners with Alstom TSF 2000TM low-NO_x firing system and installation of two elevations of separated overfire air.~~
- ~~Installation of a new wet-lime, flue gas de-sulfurization system at Unit 2 (FGD).~~
- ~~Upgrade of existing flue gas desulfurization system to > 90% sulfur dioxide removal at Unit 1.]~~

[6] Utah Division of Air Quality Approval Orders: Huntington Unit 2 - AN0238012-05, Huntington Unit 1 - DAQE-AN0102380019-09 (note – on January 19, 2010 an administrative amendment was made to the 2009 AO), Hunter Units I and 2 - DAQE-AN0102370012-08, and Section IX Part H.21 and H.22 of the SIP.

[7] 40 CFR Part 51 Appendix Y Guidelines for BART Determinations under the Regional Haze Rule (70 Federal Register 39135)

~~Table 5.Emissions Rates (lb/MMBtu) for the Retrofitted Hunter and Huntington Units~~

~~Units~~	~~Utah [Permitted Rates]BART Emission Rate[8]~~			~~Presumptive BART Limits[9]~~	
~~Rate: lb/MMBtu~~	~~SO_2 lb/MMBtu~~	~~NOx lb/MMBtu~~	~~PM lb/MMBtu~~	~~SO_2 lb/MMBtu~~	~~NO_x lb/MMBtu~~
~~Hunter 1~~	~~0.12~~	~~0.26~~	~~0.05~~	~~0.15~~	~~0.28~~
~~Hunter 2~~	~~0.12~~	~~0.26~~	~~0.05~~	~~0.15~~	~~0.28~~
~~Huntington 1~~	~~0.12~~	~~0.26~~	~~0.05~~	~~0.15~~	~~0.28~~
~~Huntington 2~~	~~0.12~~	~~0.26~~	~~0.05~~	~~0.15~~	~~0.28~~

~~Table 6. Change in Emissions (tons/yr) for Retrofitted BART Units~~

~~Unit~~	~~Pre-Control SO_2~~	~~Pre-Control NOx~~	~~Pre-Control PM_{10}~~	~~Post-Control SO_2~~	~~Post-Control NO_x~~	~~Post-Control PM_{10}~~	~~Delta SO_2~~	~~Delta NO_x~~	~~Delta PM_{10}~~
~~Hunter 1~~	~~2741~~	~~6833~~	~~533~~	~~2239~~	~~4851~~	~~280~~	~~-502~~	~~-1981~~	~~-253~~
~~Hunter 2~~	~~2425~~	~~5922~~	~~533~~	~~2185~~	~~4734~~	~~273~~	~~-240~~	~~-1187~~	~~-260~~
~~Huntington 1~~	~~2538~~	~~5676~~	~~444~~	~~2052~~	~~4445~~	~~256~~	~~-486~~	~~-1231~~	~~-188~~
~~Huntington 2~~	~~13703~~	~~5582~~	~~443~~	~~1743~~	~~3776~~	~~218~~	~~-11960~~	~~-1806~~	~~-225~~
~~TOTALS~~	~~21,407~~	~~24,013~~	~~1,953~~	~~8,219~~	~~17,807~~	~~1,027~~	~~-13,189~~	~~-6,206~~	~~-926~~

~~]~~

e. Schedule for Installation of Controls

Pursuant to 51.308(e)(1)(C)(iv) each source subject to BART is required to install and operate BART no later than 5 years after approval of the implementation plan, and pursuant to 51.308(e)(2)(E)(3) all alternative measures must take place within the first planning period. Table 6 shows that the required schedule will be met for all units.[~~The PacifiCorp schedule for the four EGUs at Huntington and Hunter sources is as follows.~~]

Table 6. Installation Schedule

Source	Notice of Intent Submitted	Permit Issued	[~~Estimated~~]In Service Date
Hunter 1	June 2006	March 2008	Spring 2014
Hunter 2	June 2006	March 2008	Spring 2011
Hunter 3			Summer 2008
Huntington 1	April 2008	August 2009	Fall 2010
Huntington 2	October 2004	April 2005	Dec 2006

~~[10] Ibid. (70 Federal Register 39131).~~

~~[10] Ibid. (70 Federal Register 39131).~~

Carbon 1			Shut down August 2015
Carbon 2			Shut down August 2015

[~~EPA under the BART Rule requires coal-fired electric generating plants of greater than 750 MW to meet BART presumptive limits. While EPA considers presumptive limits to be appropriate for all coal-fired power plants greater than 750 MW, the State may establish different requirements if the State can demonstrate that an alternative is justified based on a consideration of the five BART factors.~~

> ~~"States, as a general matter, must require owners and operators of greater than 750 MW power plants to meet these BART emission limits… a State may establish different requirements if the State can demonstrate that an alternative determination is justified based on a consideration of the five statutory factors."~~[10]

> ~~"For Coal-fired EGU's greater than 200 MW located at greater than 750 MW power plants and operating without post-combustion controls (i.e. SCR or SNCR), we have provided presumptive NOx limits, differentiated by boiler design and type of coal burned. You may determine that an alternative control level is appropriate based on careful consideration of the statutory factors." (Appendix Y Part 51 – IV (E)(5).~~[11]

~~EPA determined presumptive limits for SO_2 and NO_x for EGUs based on a methodology equivalent to that required in 50 CFR 51 Appendix Y for BART Rule. The EPA determination of presumptive limits included:~~

- ~~Identification of all potential BART-eligible EGUs (all BART-eligible EGU's were assumed to be Subject to BART)~~
- ~~Technical analyses and industry research to determine applicable and appropriate SO_2 and NO_x control options,~~
- ~~Economic analysis to determine cost effectiveness for each potentially BART-eligible EGU~~
- ~~Evaluation of historical emissions and forecast emission reductions for each potentially BART-eligible EGU~~[12]~~.~~
- ~~NOx and SO_2 CALPUFF modeling of emission impacts at model Class I area.~~

~~The analysis included 491 potential BART EGUs including Hunter Units 1 and 2 and Huntington Units 1 and 2. The technical analysis conducted by EPA to~~

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[10] ~~Ibid. (70 Federal Register 39131).~~

[11] ~~70 Federal Register 39171~~

[12] ~~Ibid. (70 Federal Register 39134)~~

~~determine presumptive BART limits for SO_2 and NO_x is in effect a BART determination analysis for 419 EGUs including Hunter Units 1 and 2 and Huntington Units 1 and 2.[13]~~

~~Section IV (E) (5) of Appendix Y Part 51 clearly requires the implementation of presumptive NOx limits for coal-fired EGU's greater than 200 MW located at greater than 750 MW power plants. Under Appendix Y, states are given the discretion to challenge presumptive limits through a five factor analysis, but presumptive limits were developed by EPA as a reasonable, equivalent and mandated substitution for a five factor analysis.[14]~~

]

Utah's long-standing Prevention of Significant Deterioration (PSD) permitting program (SIP Section VII and R307-405), New Source Review permitting program (SIP Section II and R307-401) and Visibility program (SIP section XVII and R307-406) will continue to protect Class I area visibility by ensuring that the BART emission limits established in Part H.21 and H.22 of this plan are maintained, requiring best available control technology for new sources, and assuring that there is not a significant degradation in visibility at Class I areas due to new or modified major sources.

~~[13] "Methodology for Developing BART NOx Presumptive Limits" EPA Clean Air Market Division June 15, 2005 HQ-OAR-2002-0076-0445 and "Technical Support Document for BART NOx Limits for Electric Generating Units Excel Spreadsheet, Memorandum April 15, 2005 HQ-OAR-2002-0076-0369~~

~~[14] CFR Part 51 Appendix Y Guidelines for BART Determinations under the Regional Haze Rule (70 Federal Register 39171)~~

Utah State Implementation Plan

Emission Limits and Operating Practices

Section IX, Part H

Adopted by the Air Quality Board [~~December 3, 2014~~]June 3, 2015

H.21. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements

a. Except as otherwise outlined in individual conditions of this Subsection IX.H.21 listed below, the terms and conditions of this Subsection IX.H.21 shall apply to all sources subsequently addressed in Subsection IX.H.22. Should any inconsistencies exist between these two subsections, the source specific conditions listed in IX.H.22 shall take precedence.

b. The definitions contained in R307-101-2, Definitions and R307-170-4, Definitions, apply to Section IX, Part H. In addition, the following definition also applies to Section IX, Part H.21 and 22:

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the boiler. It is not necessary for fuel to be combusted for the entire 24-hour period.

c. The terms and conditions of R307-107-1 and R307-107-2 shall apply to all sources subsequently addressed in Subsection IX.H.22.

d. Any information used to determine compliance shall be recorded for all periods when the source is in operation, and such records shall be kept for a minimum of five years. All records required by IX.H.21.c shall be kept for a minimum of five years. Any or all of these records shall be made available to the Director upon request.

e. All emission limitations listed in Subsections IX.H.22 shall apply at all times, unless otherwise specified in the source specific conditions listed in IX.H.22.

f. Stack Testing:

  i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.22 shall be performed in accordance with the following:

    A. Sample Location: The testing point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or the most recent version of the EPA-approved test method if approved by the Director.

    B. Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2, or the most recent version of the EPA-approved test method if approved by the Director.

    C. Particulate (PM): 40 CFR 60, Appendix A, Method 5B, or the most recent version of the EPA-approved test method if approved by the Director. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. The back half condensables shall also be tested using Method 202. The back half condensables shall not be used for compliance demonstration but shall be used for inventory purposes.

    D. Calculations: To determine mass emission rates (lb/hr, etc.) the pollutant concentration as determined by the appropriate methods above shall be multiplied by the volumetric flow rate and any necessary conversion factors to give the results in the specified units of the emission limitation.

    E. A stack test protocol shall be provided at least 30 days prior to the test. A pretest conference shall be held if directed by the Director.

g. Continuous Emission and Opacity Monitoring.

  i. For all continuous monitoring devices, the following shall apply:

    A. Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (d) 40 CFR 60.13, the owner/operator of an affected source shall continuously operate all required continuous monitoring systems and shall meet minimum frequency of operation requirements as outlined in R307-170 and 40 CFR 60.13.

    B. The monitoring system shall comply with all applicable sections of R307-170; 40 CFR 13; and 40 CFR 60, Appendix B – Performance Specifications.

C. For any hour in which fuel is combusted in the unit, the owner/operator of each unit shall calculate the hourly average NOx concentration in lb/MMBtu.

D. At the end of each boiler operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day and the previous 29 successive boiler operating days.

E. An hourly average NOx emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in R307-170, is acquired by the owner/operator for both the pollutant concentration monitor (NOx) and the diluent monitor (O2 or CO2).

H.22. Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology

a. PacifiCorp Hunter

i. Particulate Limitations on Units #1 and #2

A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.

B. Stack testing for the emission limitation shall be performed each year on each boiler.

C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.

ii. NOx Limitations on Units #1 and #2

A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

iii. NOx Limitation on Unit #3

A. Emissions of NOx shall not exceed 0.34 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

b. PacifiCorp Huntington

i. Particulate Limitations on Units #1 and #2

A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.

B. Stack testing for the emission limitation shall be performed each year on each boiler.

C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.

ii. NOx Limitations on Units #1 and #2

A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

c. PacifiCorp Carbon

i. Conditions on Units #1 and #2

A. The owner/operator shall permanently close and cease operation of Carbon units #1 and #2 by August 15, 2015. The owner/operator shall notify the Director of the permanent closure of the Carbon Plant by no later than September 15, 2015.

B. The owner/operator shall request a rescission of Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 by no later than September 15, 2015.

C. Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 shall be rescinded by no later than December 15, 2015.

Public Hearing / Comment Summary

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
REHABILITATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brad Smith by phone at 801-538-7510, by FAX at 801-538-7768, or by Internet E-mail at brad.smith@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2015

AUTHORIZED BY: Brad Smith, State Superintendent of Public Instruction

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R280. Education, Rehabilitation.
R280-200. Rehabilitation.
R280-200-1. Authority and Purpose.

A. This rule is authorized by Section 53A-24-105 which permits the Utah State Board of Education to administer funds made available for vocational rehabilitation and independent living.

B. The purpose of this rule is to establish the standards and procedures for the Utah State Office of Rehabilitation.

R280-200-2. Standards and Procedures for Vocational Rehabilitation.

A. The Utah State ~~[Board of Education]~~Office of Rehabilitation shall adopt[s] and incorporate[s] by reference within this rule the standards and procedures of: the Rehabilitation Act of 1973, P.L. 102-569 (amended in 1998).

B. In addition, the Utah State ~~[Board of Education]~~Office of Rehabilitation shall conduct the Rehabilitation Program consistent with:

(1) All state plans which are required and submitted under P.L. 102-569, including those for Vocational Rehabilitation, Title VI C, and Independent Living Rehabilitation Services and

(2) The Case Service Manual for the Vocational Rehabilitation Program, developed by the Utah State Office of Rehabilitation, 2012, available from the Utah State Office of Rehabilitation and from vocational rehabilitation counselors employed by the Utah State Office of Rehabilitation.

R280-200-3. Board Approval for Federal Funding Requests.

A. The Utah State Office of Rehabilitation shall not make application for new federal grants or reallotment funding without prior approval of the Utah State Board of Education. As part of the approval process, the Utah State Office of Rehabilitation shall sufficiently inform the Utah State Board of Education about the implications of all match and maintenance of effort (MOE) requirements.

B. The Utah State Office of Rehabilitation may not borrow ahead from future federal or state years without approval from the Utah State Board of Education.

KEY: vocational education, rehabilitation
Date of Enactment or Last Substantive Amendment: [~~June 7, 2013~~]2015
Notice of Continuation: April 8, 2013
Authorizing, and Implemented or Interpreted Law: 53A-24-105

Environmental Quality, Air Quality
R307-110-17
Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 39167
FILED: 03/04/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 10/01/2014, the Air Quality Board proposed adding new sections IX.H.21 and 22, Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements, to the state implementation plan (SIP). The amendments to the SIP were proposed because on 12/14/2012, the EPA approved the majority of Utah's Regional Haze SIP (RH SIP), but disapproved Utah's Best Available Retrofit Technology (BART) determinations for NOx and particulate matter (PM) for PacifiCorp's Hunter Unit 1, Hunter Unit 2, Huntington Unit 1, and Huntington Unit 2 that were adopted by the Air Quality Board in 2008. Specifically, EPA determined that the approval orders and operating permits for PacifiCorp's Hunter and Huntington plants were not practicably enforceable. A public comment period for the proposed SIP amendments was held from 11/01/2014 through 12/22/2014, and a number of public comments were received. After reviewing the comments and consulting with EPA, Division of Air Quality staff determined that an alternative to BART approach that considers the additional emission reductions due to the expected closure of the PacifiCorp Carbon plant and controls installed on PacifiCorp Hunter Unit 3 in 2008 would both be approvable by EPA and also provide greater reasonable progress towards improved visibility at Utah's Class I areas. Because Section R307-110-17 is the section that incorporates by reference the latest version of SIP Section IX, Part H (the SIP section that establishes enforceable emission limits), the rule needs to be amended as well.

SUMMARY OF THE RULE OR CHANGE: Two new sections are added to Part H of the SIP to include enforceable conditions and emission limitations for the alternative to BART for PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Hunter Unit 3, PacifiCorp Huntington Unit 1, PacifiCorp Huntington Unit 2, and the PacifiCorp Carbon plants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(e)

MATERIALS INCORPORATED BY REFERENCES:

- Updates State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, published by State of Utah, Division of Air Quality, 06/03/2015

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The emission limits in Part H are already enforceable under approval orders; therefore, there are no anticipated costs or savings to the state budget.
- LOCAL GOVERNMENTS: The new sections of Part H only apply to PacifiCorp plants; therefore, there are no anticipated costs or savings to local governments.
- SMALL BUSINESSES: The new sections of Part H only apply to PacifiCorp plants; therefore, there are no anticipated costs or savings to small businesses.
- PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The new sections of Part H only apply to PacifiCorp plants; therefore, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The enforceable conditions and emission limitations for the alternative to BART for PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Hunter Unit 3, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2 should not result in any additional compliance costs as the limits are already established in PacifiCorp's approval orders and operating permits. Likewise, the requirement to close the PacifiCorp Carbon plant should not result in any additional compliance costs as PacifiCorp has already announced the closure of that plant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The enforceable conditions and emission limitations for the alternative to BART for PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Hunter Unit 3, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2 should not have a fiscal impact on businesses as the limits are already established in PacifiCorp's approval orders and operating permits. Likewise, the requirement to close the PacifiCorp Carbon plant should not have a fiscal impact on businesses as PacifiCorp has already announced the closure of that plant.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/04/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on **[~~December 3, 2014~~]June 3, 2015**, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Enactment or Last Substantive Amendment: [~~December 4, 2014~~]2015
Notice of Continuation: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(e)

Environmental Quality, Air Quality
R307-110-28
Regional Haze

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 39166
FILED: 03/04/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 10/01/2014, the Air Quality Board proposed amending state implementation plan (SIP) Section XX.D.6, Regional Haze, Long-Term Strategy for Stationary Sources, Best Available Control Technology (BART) Assessment for

NOx and PM. The amendments to the SIP were proposed because on 12/14/2012, the EPA approved the majority of Utah's Regional Haze SIP (RH SIP), but disapproved Utah's Best Available Retrofit Technology (BART) determinations for NOx and particulate matter (PM) for PacifiCorp's Hunter Unit 1, Hunter Unit 2, Huntington Unit 1, and Huntington Unit 2 that were adopted by the Air Quality Board in 2008. Specifically, EPA determined that the SIP did not contain a five-factor analysis as required by the rule. Therefore, the proposed amendment to the SIP included a five-factor analysis. A public comment period for the proposed SIP amendments was held from 11/01/2014 through 12/22/2014, and a number of public comments were received. After reviewing the comments and consulting with EPA, Division of Air Quality staff determined that an alternative to BART approach that considers the additional emission reductions due to the expected closure of the PacifiCorp Carbon plant and controls installed on PacifiCorp Hunter Unit 3 in 2008 would both provide greater reasonable progress towards improved visibility at Utah's Class I areas and be approvable by EPA. This alternative to BART approach was proposed for public comment by the Air Quality Board and is available for public review at http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Pubrule.htm. Because Section R307-110-28 incorporates by reference the latest version of Utah's regional haze SIP Section XX adopted by the Air Quality Board, the rule needs to be amended as well. The public review and comment period for proposed SIP amendments, the technical support documentation, and the proposed amendment to Section R307-110-28 will run simultaneously.

SUMMARY OF THE RULE OR CHANGE: The rule is changed to incorporate the version of the regional haze SIP as adopted by the Air Quality Board on 06/03/2015. The SIP is amended to explicitly identify an alternative to BART for NOx that keeps in place the current NOx emission limits for PacifiCorp Hunter 1 and 2 and PacifiCorp Huntington 1 and 2 that are more stringent than EPA's presumptive BART limits; takes credit for installation of low-NOx burners at PacifiCorp Hunter 3 in 2008; and makes enforceable the expected closure of PacifiCorp Carbon 1 and 2.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(e)

MATERIALS INCORPORATED BY REFERENCES:

♦ Updates Utah State Implementation Plan, Section XX, Regional Haze, published by Utah Division of Air Quality, 06/03/2015

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no changes in the SIP or the rule that affect the state; therefore, there are no anticipated costs or savings to the state budget.

♦ LOCAL GOVERNMENTS: There are no changes to the SIP or the rule that affect local governments; therefore, there are no anticipated costs or savings.

♦ SMALL BUSINESSES: The changes made to the SIP address an alternative to BART for PacifiCorp. Because PacifiCorp employs more than 50 persons, there are no anticipated costs or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the changes made to the SIP only affect PacifiCorp, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The conditions and emission limitations for the alternative to BART for the PacifiCorp Hunter and Huntington plants should not result in any additional compliance costs as the limits are already established in PacifiCorp's approval orders and operating permits. Likewise, the requirement to close the PacifiCorp Carbon plant should not result in any additional compliance costs as PacifiCorp has already announced the closure of that plant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The conditions and emission limitations for the alternative to BART for the PacifiCorp Hunter and Huntington plants should not result in any additional compliance costs as the limits are already established in PacifiCorp's approval orders and operating permits. Likewise, the requirement to close the PacifiCorp Carbon plant should not result in any additional compliance costs as PacifiCorp has already announced the closure of that plant.

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/04/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on [~~April 6, 2011~~]June 3, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Enactment or Last Substantive Amendment: [~~December 4, 2014~~]2015
Notice of Continuation: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(e)

Environmental Quality, Air Quality
R307-210
Stationary Sources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 39168
FILED: 03/04/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule incorporates the majority of 40 Code of Federal Regulations (CFR) Part 60 into the Utah Air Quality Rules. Since 07/01/2011, 40 CFR Part 60 has undergone many substantive changes that have not been incorporated into the state rules; therefore, Rule R307-210 needs to be amended to incorporate the changes published as of 07/01/2014. The federal rules already apply to the sources; incorporating them into the state rule allows the Division of Air Quality to enforce the standards.

SUMMARY OF THE RULE OR CHANGE: Amendments in the federal New Source Performance Standards have been made in 40 CFR Part 60 since Utah last incorporated the standards by reference into Rule R307-210. This rulemaking incorporates the revised federal standards through 07/01/2014. The following amendments to 40 CFR Part 60 are what is being incorporated into Rule R307-210. On 01/18/2012, the Environmental Protection Agency (EPA) amended 40 CFR Part 60, Appendix A to incorporate the most recent versions of ASTM International (ASTM) standards into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. This final rule allowed the use of alternatives in field and laboratory applications previously impermissible as part of compliance with EPA regulations. The older embedded ASTM standards unnecessarily impede the use of effective, comparable, and available alternatives to mercury-containing industrial thermometers. On 02/16/2012, the EPA amended 40 CFR Part 60, Subpart A, B, D, Da, Db, and Dc to revise standards of performance in response to a voluntary remand of a final rule. Specifically, they amended new source performance standards (NSPS) after analysis of the public comments. The EPA also finalized several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units. On 04/19/2012, EPA amended 40 CFR Part 60, Subpart Da to correct certain preamble and regulatory text. This action corrected typographical errors, such as cross-reference errors and certain preamble text that is not consistent with the final regulatory text, which published in the Federal Register on Thursday, 02/16/2012. On 07/30/2012, EPA amended 40 CFR Part 60, Appendix A to promulgate Method 16C for measuring total reduced sulfur (TRS) emissions from stationary sources. Method 16C offers the advantages of real-time data collection and uses procedures that are already in use for measuring other pollutants. Method 16C will be a testing option that is used at the discretion of the tester. On 07/14/2012, EPA amended 40 CFR Part 60, Subpart A, Ga, New source performance standards (NSPS) for nitric acid plants. Nitric acid plants include one or more nitric acid production units (NAPUs). These revisions include a change to the nitrogen oxides (NOX) emission limit, which applies to each NAPU commencing construction, modification, or reconstruction after 10/14/2011. These revisions also include additional testing and monitoring requirements. On 08/16/2012, the EPA amended 40 CFR Part 60, Subparts KKK, LLL, OOOO to finalize the review of new source performance standards for certain oil and natural gas source sources. In this action, the EPA revised the new source performance standards for volatile organic compounds from leaking components at onshore natural gas processing plants and new source performance standards for sulfur dioxide emissions from natural gas processing plants. The rule also establishes standards for certain oil and gas operations not covered by the existing standards. In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, and storage vessels. This action also finalizes the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. This action included revisions to the existing leak detection and repair requirements. This action finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction. This final rule became effective on 10/15/2012. On 09/12/2012, the EPA amended 40 CFR Part 60, Subpart A, J, Ja to finalize amendments to Standards of Performance for Petroleum Refineries and new standards of performance for petroleum refinery process units constructed, reconstructed or modified after 05/14/2007. On 01/30/2013, EPA amended Subpart A, IIII, JJJ to amend the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines. The final amendments included alternative testing options for certain large spark ignition (generally natural gas-fueled) stationary reciprocating internal combustion engines,

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

DAQ-024-15

MEMORANDUM

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Mark Berger, Air Quality Policy Section Manager

DATE: May 21, 2015

SUBJECT: FINAL ADOPTION: Amend R307-110-17. General Requirements: State Implementation Plan. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits; and R307-110-28. General Requirements: State Implementation Plan. Regional Haze.

On March 4, 2015, the Board proposed amendments to R307-110-17 and R307-110-28 to incorporate by reference the newest versions of the State Implementation Plan (SIP) for Regional Haze, along with the new emission limits added to Part H. The proposed rules update the version of the SIP incorporated into the rules to be the version adopted by the Air Quality Board. A 30-day public comment period was held from April 1 to May 1, 2015. No comments were submitted regarding incorporating the SIP into the rules and no public hearing was requested.

Staff Recommendation: Staff recommends that the Board adopt R307-110-17 and R307-110-28 as proposed.

195 North 1950 West • Salt Lake City, Utah
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Response to Comments

General Comments

1. [National Park Service (hereinafter NPS] On an annual basis millions of people come from around the world to visit Utah's national parks and to experience the iconic, scenic views that are among the most spectacular in the country. These views are degraded on many days by industrial haze that impairs visibility. The NPS Organic Act of 1916 and the Wilderness Act of 1964 address the importance of protecting these areas. The goal of the PSD provisions in the Clean Air Act is to preserve, protect and enhance the air quality in national parks. Together these laws required that NPS, EPA, and the State work together to reduce regional haze.

Response: The current proposal before the Board is the last piece of a comprehensive strategy developed to address regional haze. Utah has been working for decades to address this important issue because it is important to the State and to the citizens of Utah. Utah's Visibility Protection Program (SIP Section XVII and R307-406) and Utah's Prevention of Significant Deterioration Program (SIP Section VII and R307-405) were adopted in the early 1980s to address the visibility goals established in the 1977 Clean Air Act. In the mid-1980s Utah's Governor appointed the Task Force on Visibility Protection to determine the appropriate level of protection for Utah's Class I areas and to determine the sources of impairment of visibility in those areas. After more than a year of investigation, the Task Force recommended that all Utah Class I areas need protection, and that the biggest cause of visibility impairment is not individual industrial source, but rather regional haze from a multitude of sources that is transported over long distances. In 1991, EPA established the Grand Canyon Visibility Transport Commission (GCVTC) as required by the 1990 Clean Air Act. Utah's Governor was vice-chair of the Commission and Utah was an active participant in the process. In 1996 the Commission finalized a comprehensive series of recommendations that addressed the multiple emission sources and pollutants that contribute to regional haze on the Colorado Plateau. These recommendations were the basis of Utah's SIP. Utah was an active participant in the Western Regional Air Partnership (WRAP) that was the follow-up organization to the GCVTC. Utah's Governor Co-chaired the WRAP and Utah representatives were co-chairs or members of many of the WRAP's Forums. The WRAP established an extensive stakeholder-based process to further develop the GCVTC's Recommendations and to improve the technical understanding of the causes of regional haze in the western states and the development of effective strategies to improve visibility in Class I areas throughout the West. Throughout this process Utah has worked with the National Park Service, EPA, and other western states as recommended by the commenter.

Utah's SIP was focused on reducing emissions of SO_2 from stationary sources because SO_2 is the most significant anthropogenic pollutant contributing to haze on the Colorado Plateau. The SIP was adopted 5 years earlier than was required for the rest of the country due to the significant work that had been completed to address visibility on the Colorado Plateau.

DAQ is in the process of finalizing the first 5-year progress report to evaluate progress under the RH SIP. Utah's Class I areas are showing improvement in visibility on the most impaired days and no degradation on the least impaired days between baseline and current monitoring data. The first 5-year progress period covers the 2005-2009 timeframe, as it represents the most recent successive 5-year averaging period. The most recent 5-year average indicates that visibility at Utah's Class I areas is improving on both the 20% worst and 20% best days, and has already achieved better visibility improvement than the preliminary reasonable progress (PRP) projections for 2018.

Table 3.28. Utah Class I Area IMPROVE Sites Visibility conditions – 20% Most and Least Impaired Days Including 2010 to 2012 data

Class I Area	Baseline (2000-2004) (dv)	First Progress Period (2005-2009) (dv)	(2009-2013) (dv)	2018 Preliminary Reasonable Progress Case (PRP18a) (dv)
20% Worst Days				
Arches NP (CANY1)	11.2	11.0	10.8	10.9
Bryce Canyon NP (BRCA1)	11.6	11.9	10.6	11.2
Canyonlands NP (CANY1)	11.2	11.0	10.8	10.9
Capitol Reef NP (CAPI1)	10.9	11.3	10.2	10.5
Zion NP (ZICA1)	12.5	12.3	10.8	N/A[1]
20% Best Days				
Arches NP (CANY1)	3.7	2.8	3.1	3.5
Bryce Canyon NP (BRCA1)	2.8	2.1	1.8	2.6
Canyonlands NP (CANY1)	3.7	2.8	3.1	3.5
Capitol Reef NP (CAPI1)	4.1	2.7	2.6	3.9
Zion NP (ZICA1)	5.0	4.3	4.2	N/A (see footnote 15)

The current control strategies in the state's Regional Haze SIP have improved visibility at Federal Class I areas in the state and have also benefitted Class I areas outside of Utah that might be impacted by emissions from Utah during the first planning period. The emission reduction strategies in Utah's RH SIP have been implemented and have been effective.

- The State of Utah has developed *The Utah Smoke Management Plan (SMP)* which provides operating procedures for federal and state agencies that use prescribed fire, wildfire, and wildland fire on federal, state and private wildlands in Utah.
- Mobile NO_x emissions in the four main urban counties (Weber, Davis, Salt Lake, and Utah) were projected to decrease 42,000 tons/yr or 61% between 2002 and 2018. Even greater emission reductions will be achieved by 2018 than had been anticipated in Utah's RH SIP due to federal Tier 3 fuel and vehicle standards that were adopted in 2014.

[1] There is no PRP18a established for the new ZICA1 monitor. The PRP18a was originally established for the original ZION1 IMPROVE monitor, which was discontinued on July 29, 2004.

- The alternative to BART measures included in the proposed revision to Utah' SIP will have decreased SO_2 emissions by 27,947 tons and NO_x emissions by 15,258 tons from the 2002 inventory by 2015.
- The GCVTC set a goal of achieving 10 percent of generation from renewable resources in 2005 and 20 percent in 2015. Significant progress has been achieved towards meeting this regional goal. Thirteen percent of electricity generation in Utah was from renewable resources in 2012 and significant new resources are currently under construction.

Utah's Regional Haze SIP reflects the state's commitment to improve visibility and is focused on strategies that will provide the greatest benefit for Utah's Class I areas.

2. [NPS] The importance of scenic values was integral to the creation of the national parks in Utah. Clear clean air is essential to this purpose. Visibility at the parks is impaired (range varies across the 5 Class I areas from 70% of the days at Bryce Canyon National Park to 83% of the days at Arches National Park) We ask that DAQ carefully consider the implications for millions of park visitors as the agency considers whether to proceed with implementation of its SIP amendments.

Response: See response to comment 1. As described in the proposed alternative to BART, DAQ has confidence that the SO_2 emission reductions from stationary sources that were the focus of Utah's SIP will be effective to further improve visibility in Utah's Class I areas throughout the year, including the high visitation period of March - November. The significant NOx emission reductions that have already occurred have not resulted in reductions in ammonium nitrate during the low visitation period of December – February and further research is needed to better understand why visibility has not improved. During the rest of the year ammonium nitrate levels are generally low and are not a significant contributor to visibility impairment. The alternative measure proposed in Utah's SIP includes further reductions in SO_2 leading to a more certain improvement in visibility than would occur due to the installation of further NOx controls on the four electric generating units (EGUs) and these benefits would occur year round.

3. [Wasatch Clean Air Coalition] A particularly valuable part of the regional haze SIP process has been development of relationships with tribes, regulators in other states and federal agencies as well as many other stakeholders. These relationships are a valuable asset that will serve as we address other regional problems.

Response: DAQ agrees with the commenter. The stakeholder-based, consensus process of the GCVTC and the WRAP led to a workable and comprehensive strategy to address regional haze on the Colorado Plateau.

4. [HEAL Utah, National Parks Conservation Association, and Sierra Club (hereinafter Conservation Organizations)] Utah's latest RH SIP proposes a Best Available Retrofit Technology ("BART") alternative that would exempt Utah's only BART-eligible sources, Hunter Units 1 and 2 and Huntington Units 1 and 2, from any emission reductions whatsoever. Should this proposal move forward, it will result in the outright deprivation of Clean Air Act-mandated cleaner, clearer air at the region's treasured Class I national parks and wilderness areas.

Response: The commenter's contention that Hunter Units 1 and 2 and Huntington Units 1 and 2 were exempted from any emissions reductions whatsoever is incorrect. The emission reduction requirements for these EGUs were established in 2008 and have been fully implemented providing visibility benefits for the last nine years. Under the alternative to BART program for SO_2, PacifiCorp installed an SO_2 scrubber on Huntington Unit 2 and upgraded the scrubbers on the other 3 EGUs. As a result, SO_2 emissions from the four EGUs decreased by 18,707 tons/yr between 2002 and 2014[2]. The alternative measures for NOx outlined in the proposed rule require the installation of low-NOx burners with overfire air at all 4 EGUs and emissions of NOx decreased by 11,988 tons/yr between 2002 and 2014[2]. The BART determination for PM in the proposed rule requires the replacement of electrostatic precipitators with baghouses leading to significant reductions in PM and mercury emissions. The total combined capital cost for these controls was over $588,000,000 with an annualized operating cost of $71,000,000/yr.

5. [Conservation Organizations] The Conservation Organizations object to the State's failure to respond to our previous comments prior to re-proposing its latest RH SIP. The Conservation Organizations also object to the State's failure to formally retract its previous RH SIP proposal before re-proposing its latest proposal.

Response: The Regional Haze SIP was re-proposed to allow for public comment on the extensive revisions that had been made to the October 2014 proposal in response to public comments, including those from the commenter. Improvements were made to the modeling analysis, also in response to comments, and these changes are reflected in the revised modeling protocol. DAQ did not summarize and respond formally to the comments because so many of the comments that were directly related to the 5-factor analysis were no longer relevant. In addition, many of the comments received were addressed and resolved by the revised analysis. With modern word processing programs it is a simple matter for commenters to copy and resubmit any relevant comments that had not been addressed.

Under the provisions of R15-4, Administrative Rulemaking Procedures, the October proposal automatically expired on March 2, 2015, 120 days after the proposal was published on November 1, 2014. Therefore there was no need to retract the previous proposal. The Board proposed the new revision on March 4, 2105.

6. [Conservation Organizations] The Conservation Organizations request that all correspondence with EPA and/or PacifiCorp regarding Utah's withdrawal of its prior proposal and submission of its latest reproposal be made publicly available and be posted to its website for public review and comment.

Response: R15-4, Administrative Rulemaking Procedures, does not require that all correspondence related to a rulemaking be posted to an agencies web site. DAQ has followed the required rulemaking procedures: the proposed rule was published in the State Bulletin with a rule analysis form as required, and a 30-day public comment period was provided. The Staff Review and the proposed SIP are thoroughly documented to describe the legal requirements, technical analysis, and justification for the proposal. Other documents are available through a request under Utah's Government Records Access

[2] 2003 for Huntington Unit 2 because 2002 was not representative of normal plant operations.

and Management Act (GRAMA). Information about GRAMA requests and the procedures for making a request are posted on DEQ's web page at http://www.deq.utah.gov/ProgramsServices/services/grama/GRAMA.htm.

7. [Numerous individuals] I understand that Utah's Regional Haze plan will not require any pollution cuts from two big Rocky Mountain Power coal plants in central Utah. I would like to urge state officials to reconsider that -- and specifically to require significant reductions in smog-producing nitrogen oxides consistent with industry-standard pollution control upgrades, as has been done for coal plants in Colorado, Arizona, and New Mexico. In Utah, this would reduce an additional 14,000 tons of nitrogen oxide emissions per year from our air. Please require the best possible reductions in air pollution from Rocky Mountain Power's coal plants. I believe that investing in cleaner energy generation is vital for our families' health and to protect our parks' iconic views and the tourism and recreation dollars they help generate.

Response: The commenters did not provide any data or documentation to support this comment. As explained in the response to comment 4, the alternative measures for NOx outlined in the proposed rule require the installation of low-NOx burners with overfire air at all 4 EGUs. These controls have already been installed on all four EGUs and have been providing visibility benefits for the past nine years. Emissions of NOx from the four EGUs decreased by 11,988 tons/yr between 2002 and 2014. As explained in the response to comment 1, visibility impairment at Utah's Class I areas is the result of multiple sources and pollutants, including natural sources such as wildfire and windblown dust. Utah's SIP is a comprehensive strategy that reflects this complexity. Utah's SIP has focused on reducing SO_2, the most significant anthropogenic pollutant at Utah's Class I areas. As described in the proposed alternative to BART, DAQ has confidence that the SO_2 emission reductions will be effective to further improve visibility in Utah's Class I areas. DAQ has less confidence that NOx reductions will provide a real benefit. The significant NOx reductions that have already occurred have not resulted in reductions in wintertime ammonium nitrate. During the rest of the year ammonium nitrate levels are generally low and are not a significant contributor to visibility impairment. Further research is needed to better understand the visibility benefits of NOx reductions and DAQ anticipates that regional modeling for the next RH SIP that is due in 2018 will improve our understanding of this important issue.

8. [Numerous individuals] The commenters did not provide any data or documentation to support this comment. Clean air is necessary for the well-being of Utah's national parks and their nine million annual visitors from around the world. The Hunter and Huntington coal plants have heavily polluted the air in the Four Corners region for decades. Because of the pollution from these coal plants, a visitor to Canyonlands National Park sees only a third of the scenic vista they would see if the air was cleaned up. This same pollution that affects visibility is also harmful to our lungs, especially those of children. Please take this opportunity to cut nitrogen oxide pollution by over 14,000 tons per year at Hunter and Huntington coal plants and invest in the future of our national parks, our economy and our health.

Response: The Four Corners Region, where Utah's Class I areas are located, is currently designated attainment for all national ambient air quality standards. Utah's PSD program, promulgated in SIP

Section VII and R307-405 and NSR permitting program, promulgated in SIP Section II and R307-401, ensure that new stationary sources do not cause or contribute to a violation of the NAAQS. When new NAAQS are promulgated, Utah reviews and updates its SIP as necessary to address the impact of emissions in Utah on nonattainment areas in downwind states. Emissions from the four EGUs that are subject to BART have not been determined to cause or contribute to nonattainment for any criteria pollutant through these regulatory processes.

As explained in the response to comment 1, visibility impairment at Utah's Class I areas is the result of multiple sources and pollutants, including natural sources such as wildfire and windblown dust. Utah's SIP is a comprehensive strategy that reflects this complexity. Utah's SIP has focused on reducing SO_2, the most significant anthropogenic pollutant at Utah's Class I areas. As described in the proposed alternative to BART, DAQ has confidence that the SO_2 emission reductions will be effective to further improve visibility in Utah's Class I areas. DAQ has less confidence that NOx reductions will provide a real benefit. The significant NOx reductions that have already occurred have not resulted in reductions in wintertime ammonium nitrate. During the rest of the year ammonium nitrate levels are generally low and are not a significant contributor to visibility impairment. Further research is needed to better understand the visibility benefits of NOx reductions and DAQ anticipates that regional modeling for the next RH SIP that is due in 2018 will improve our understanding of this important issue.

9. [Individual] Utah is the last state in the union to comply with the haze regulations of the Clean Air Act.

Response: Utah's Regional Haze SIP was submitted in 2003, five years earlier than required, and has been providing visibility benefits for the last 12 years. Significant emission reductions were required in 2008 to address BART for NOx and PM. These reductions have been fully implemented and have provided visibility benefits for the last nine years.

10. [Individual] What is the cost of non-action on the part of DEQ and RMP? What are the long-term costs of the negative impacts of haze and pollution on Utah's tourism industries and the respiratory health of Utah's citizens?

Response: The alternative to BART measures included in the proposed revision to the RH SIP will have decreased SO_2 emissions by 27,947 tons and NO_x emissions by 15,258 tons from the 2002 inventory by 2015. EPA has fully approved the reasonable progress demonstration in Utah's RH SIP (77 FR 74355, December 14, 2012). The most stringent PM controls have been installed on the 4 subject to BART EGUs and the alternative measures for both SO2 and NOx provide greater reasonable progress than BART. The SIP does not represent non-action as claimed by the commenter. As described in the response to comment 1, Utah has been working for decades to address visibility impairment at Utah's Class I areas, but it is a complex problem resulting from multiple emission sources and pollutants, including natural emissions from wildfires and windblown dust. Utah's SIP is focused on reductions in SO_2, the most significant anthropogenic pollutant and those reductions have led to improvements in visibility. These improvements have had a positive impact on the experience of visitors to the Class I areas. As

addressed in the response to comment 8, the emissions from the four EGUs that are subject to BART have not been demonstrated to cause or contribute to nonattainment for any criteria pollutant.

11. [UAMPS] UAMPS supports the SIP Revision as the SIP Revision is consistent with the Regional Haze regulations and best meets the main objective of the Regional Haze Program to return visibility conditions in Class I areas to natural conditions by 2064. UAMPS adopts PacifiCorp's comments supporting the SIP Revision.

Response: Comment noted.

PM BART Determination

12. [PacifiCorp and UAMPS (hereinafter PacifiCorp)] In its Guidelines for BART Determinations Under the Regional Haze Rule found at 40 CFR §51, Appendix Y ("BART Guidelines"), EPA states in part at Section IV.D.9: "If you find that a BART source has controls already in place which are the most stringent controls available..., then it is not necessary to comprehensively complete each step of the BART analysis in this section. As long as these most stringent controls available are made federally enforceable for the purpose of implementing BART for that source, you may skip the remaining analyses in this section...." The SIP Revision reiterates and concludes, based on Utah's review and approval of PacifiCorp's PM BART analyses, that the "baghouse technology required...is still the most stringent technology available and 0.015 lb PM/MMBtu represents the most stringent emission limit." (Staff Review, p. 5). In addition, by including the emission limits in amended Section IX.H.21 and 22, the SIP Revision makes the PM BART limits federally enforceable. As a result, Utah properly skipped the remaining BART analyses steps consistent with the BART Guidelines and properly determined PM BART for the Units.

Response: Comment noted.

13. [PacifiCorp] Utah's conclusion is further supported by SIP approvals offered by EPA in surrounding states, which PacifiCorp requests that Utah specifically rely on in making its final decision to approve the proposed PM BART determinations for the Units.

    a. In Colorado, with regard to similar electric generating units (EGU), EPA explained that "[f]abric filter baghouses are the most stringent control technology for controlling PM emissions." 77 Fed. Reg. 18,052, 18,066 (Mar. 26, 2012). EPA further explained, "consistent with the BART Guidelines, the State did not provide a full five-factor analysis because the State determined BART to be the most stringent control technology and limit" and "assumes the BART limit can be met with the operation of the existing fabric filter baghouses." *Id.* Significantly, EPA concluded that it "agree[d] with the State's conclusions and we are proposing to approve its PM BART determinations." *Id.*

    b. In Wyoming, EPA approved the State's conclusions that "fabric filters represent the most stringent PM control technology" and that "[c]onsistent with the BART Guidelines, the State did

not provide a five-factor analysis because the State determined BART to be the most stringent control technology and limit." 77 Fed. Reg. 33,022, 33,035. (*citing* 70 Fed. Reg. at 39,165 (Appx. Y)). EPA also has approved or proposed to approve in numerous other actions, including Wyoming, the same 0.015 lb/MMBtu PM BART emissions limit adopted in the prior Utah RH SIP and in this SIP Revision. *See, e.g.*, 79 Fed. Reg. 5,032, 5,220. *See also* EPA's approval of PM BART in Arizona (77 Fed. Reg. at 72,523 (December 5, 2012)) and for the Four Corners Power Plant (77 Fed. Reg. 51, 620, 51, 636 (August 24, 2012)).

c. In other actions, EPA has approved PM BART limits that are twice as high as those included for the Units in the SIP Revision. For example, EPA approved a RH SIP with a PM BART emissions limit of 0.03 lb/MMBtu for nine EGUs in Colorado. *See, e.g.*, 77 Fed. Reg. 18,051,18,066 (Mar. 26, 2012); 77 Fed. Reg. at 76,872 . EPA approved PM BART emissions limits of 0.03 and 0.04 lb/MMBtu for certain EGUs in Wyoming, where the most stringent limit was 0.015 lb/MMBtu. 79 Fed. Reg. at 5,220. EPA also approved PM limits of 0.07 lb/MMBtu for four EGUs in North Dakota. 76 Fed. Reg. at 58,585; 77 Fed. Reg. at 20,930. In addition, EPA also adopted a PM limit of 0.26 lb/MMBtu for Corette in its FIP for Montana. 77 Fed. Reg. at 57,911.

Response: The information has been added as footnotes in Section III of the Staff Review as part of the record supporting the conclusion that the emission limit for PM represents the most stringent technology available.

Alternative To BART Analysis vs Case-by-Case Review

14. [NPS] DAQ has determined that Hunter Units 1 and 2 and Huntington Units 1 and 2 are subject to BART. Yet in the proposal DAQ has proposed to claim emission reductions due to the planned closure of the Carbon plant as an acceptable alternative to BART installation and emission reductions from the Hunter and Huntington Plants. The State of Utah appears unprepared to fulfill its legal requirements under the Clean Air Act to protect and enhance the views that attract millions of visitors to the parks each year.

Response: The regional haze rule provides two pathways to address the regional haze BART requirements. The first, outlined in 40 CFR 51.308(e)(1), is a case-by-case review that must meet the criteria established in 40 CFR Part 51, Appendix Y. The second, outlined in 40 CFR 51.308(e)(2), provides the criteria for an alternative program. Either pathway is equally acceptable under the rule. The proposed RH SIP addresses BART for NOx using the second pathway, an alternative program, and the Staff Review demonstrates that the alternative program meets the requirements of 40 CFR 51.308(e)(2). The commenter does not explain how the proposal that establishes alternative measures that provide greater reasonable progress than BART, as fully allowed by the RH rule, does not fulfil the requirements under the Clean Air Act.

15. [PacifiCorp] The National Park Service mischaracterized the nature of the Alternative Measure. As clearly explained in the SIP Revision, the Alternative Measure does not rely solely on emission reductions from the Carbon power plant. Instead, it consists of: (i) substantial emission reductions associated with the closure of the Carbon plant (non-BART eligible); (ii) early NOx emission

reductions due to upgraded LNB/OFA at Hunter Unit 1 and Unit 2 (BART eligible); (iii) early NOx emission reductions due to upgraded LNB/OFA at Huntington Unit 1 and Unit 2 (BART eligible); and (iv) substantial NOx emission reductions due to upgraded LNB/OFA at Hunter Unit 3 (non-BART eligible). It is unfair and improper to characterize the entirety of the Alternative Measure as merely reductions associated with the Carbon power plant closure. Moreover, given the extensive explanation in the letter of the importance of improved visibility at Utah's national parks, the National Park Service should be pleased with – not critical of – the Alternative Measure because it provides even greater reasonable progress than would be achieved by assuming the most stringent NOx controls (SCR) and limits. In other words, Utah is proposing the very "strong action" that the National Park Service is asking Utah to do. What Utah cannot do, of course, is require both the Alternative Measure and also the most stringent NOx controls and limits as BART on the Units.

Response: Comment noted.

16. [PacifiCorp] 40 C.F.R. 51.308(e)(2) allows a state to implement an "other alternative measure" ("Alternative Measure") in lieu of BART so long as the Alternative Measure meets certain regulatory requirements and can be demonstrated to "achieve greater reasonable progress than would be achieved through the installation and operation of BART." Greater reasonable progress can be demonstrated using one of two methods: (i) "greater emission reductions" than under BART (40 C.F.R. §51.308(e)(3)); or (ii) "based on the clear weight of evidence" (40 C.F.R. §51.308(e)(2)(E)). As the U.S. Circuit Court of Appeals for the 10th Circuit recently observed, the state is free to choose one method or the other. *WildEarth Guardians v. E.P.A.*, 770 F.3d 919, 935-37 (10th Cir. 2014). The court characterized the former approach as a "quantitative" and the later as "qualitative," and specifically sanctioned the use of qualitative factors under the clear weight of evidence.

Response: A reference to the *WildEarth Guardians v. E.P.A.* decision has been added as a footnote in Section IV of the Staff Review to provide further support to the ability of the state to choose to use an alternative measure. As the use of multiple metrics is an important aspect of the weight of evidence, the citation has also been added to Section VIII.5 of the Staff Review. There it serves as additional support that the alternative approach provides greater reasonable progress than the most stringent available NOx controls.

17. [PacifiCorp] Some parties have expressed the view, because PacifiCorp considered certain planning scenarios in PacifiCorp's 2015 Integrated Resource Plan ("PacifiCorp IRP") that include the installation of SCR at one or more of the Units, that Utah also should require SCR at the Units under the Utah SIP Revision. By its nature, however, the PacifiCorp IRP is a general planning document that is intended to assess a variety of potential future generation resource portfolio scenarios across PacifiCorp's generating system. It does not represent a commitment to install SCR at the Units, nor does it indicate that SCR represents BART at the Units. In addition, although the PacifiCorp IRP includes remaining life and cost assumptions for the Units in regard to SCR installation across the planning scenarios assessed, those assumptions do not directly relate to the SIP Revision.

Response: Comment noted.

Alternative to BART Analysis Sources Covered

18. [PacifiCorp] ***§51.308(e)(2)(i)(A)*** – Utah properly listed all of the BART-eligible sources. *See* SIP Section XX.D.6.b(1), Table 3, page 21; and Staff Review, Section V, page 7. ***§51.308(e)(2)(i)(B)*** – Utah properly listed all of the BART-eligible sources which are covered by the Alternative Measure. *See* SIP Section XX.D.6.c; and Staff Review, Section V, page 7.

Response: Comment noted.

19. [NPS] The BART alternative does not comply with the intent of the 1999 regional haze rule. States have demonstrated an alternative either through other sources/pollutants within the fence line of the source or through a trading program. The UT DAQ BART Alternative is unique in that it is not a pre-existing state program (like CO, MA, MD and NC) and goes beyond the fence line of the BART-eligible Hunter and Huntington facilities to include a facility (Carbon Power Plant) not subject to BART and a pollutant (SO_2) already covered under a separate BART trading program. For these reasons, it is our understanding that the UT DAQ approach is more similar to the trading programs previously cited than the BART Alternatives listed above. To conform to the intent of the 1999 Regional Haze Rule, it seems the UT trading program should include all significant sources within a source category (EGUs) in a trading region (UT). We compared 2014 emissions (Q in tons-per-year) from CAMD to distances (d in km) from the 100 ton-per-year sources (the Q/d greater than 10 approach recommended by the BART Guidelines) and found two additional EGUs that should have been included in UT DAQ's BART Alternative—Intermountain Power Unit 1 & Unit 2 (IPP). This satisfies the 2006 recommendation that we "...include all [significant] sources within a source category in a trading region..."

Response: The regional haze rule, 40 CFR 51.308(e)(2)(B) establishes the criteria for determining which sources to include in an alternative program. The rule states, "The State is not required to include every BART source category or every BART-eligible source within a BART source category in an alternative program, but each BART-eligible source in the State must be subject to the requirements of the alternative program, have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraphs (e)(1) or (e)(4) of this section." During the development of the rule EPA had considered the need to include all sources within a category in order to prevent emission shifting, but ultimately rejected that approach. The preamble to the 2006 regional haze rule revision states,

> "having carefully considered the comments and the relationship between the requirement for category-wide participation of BART-eligible sources and the requirements for the State to address emission shifting, we are adopting final provisions that maximize the flexibility of the States while ensuring that the BART-eligible sources are addressed in some fashion by States...States are not required to include each BART-eligible source in a source category in an alternative program; however, any BART-eligible sources not included in an alternative program would remain subject to the general requirements governing BART sources." (71 FR 60619)

Intermountain Power Units 1 & 2 is therefore not required to be included in the alternative program. The units at Intermountain Power are not BART-eligible and are therefore not required to meet BART provisions independently. The plant is included in the SO_2 milestone and backstop trading program and the overall reasonable progress analysis in Utah's SIP.

20. [Conservation Organizations] For any alternative measure, "[t]he State is not required to include every BART source category or every BART-eligible source within a BART source category in an alternative program, but *each BART-eligible source in the State must be subject to the requirements of the alternative program, [or] have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART.*" This requirement ensures that the sources with the greatest share of the contribution to the regional haze problem do not escape statutorily mandated emission reductions. In fact, the alternative excludes all BART sources in the state, exempting Hunter Units 1 and 2 and Huntington Units 1 and 2 from emission reductions under both the alternative program and BART-derived emission limits.

Response: The comment is factually incorrect, and provides no basis for the claim it makes. Utah has identified only four BART-eligible sources in the state: PacifiCorp Hunter Units 1 and 2 and PacifiCorp Huntington Units 1 and 2. All four of these EGUs are included in the alternative program. As described in the response to comment 4, the alternative program required the installation of low-NOx burners on all four BART-eligible EGUs that resulted in substantial emission reductions of NOx in addition to emission reductions measures at three EGUs that are not BART-eligible. The required emission controls were installed early and have been improving visibility at Utah's Class I areas since 2006.

21. [Conservation Organizations] Importantly, EPA's BART alternative regulations are intended to allow future emission reductions to serve as a substitute for BART. For example, the regulations require a state to demonstrate that its program "will achieve greater reasonable progress..." indicating that BART alternative emission reductions must occur in the future. Moreover, the regulations also require "an analysis of the projected emission reductions achievable through the trading program or other alternative measure, again requiring that emission reductions occur in the future. Utah's proposed alternative does not satisfy these requirements. In fact, the alternative relies exclusively on past emission reductions.

Response: 40 CFR 51.308(e)(2)(iv) establishes the criteria for when emission reductions due to other requirements may be included as part of an alternative measure. This section requires "a demonstration that the emission reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP," which is defined as 2002 for regional haze purposes. The commenter is taking language out of context in the rule while ignoring the very clear language that references the baseline date of the SIP for determining which reductions may be considered. The commenter is also not considering the long process that has occurred in the development of Utah's SIP. The SIP was originally adopted in 2003 requiring significant emission reductions of SO_2 from stationary sources and was amended in 2008 to require significant emission reductions of NOx and PM under the BART requirements. These emission reductions have been fully implemented and have been providing visibility benefits since 2003. Any

revision to the BART determination, such as the alternative measures addressed in the proposal, must fully include the emission reductions that have already been required as BART.

22. [Conservation Organizations] While the April 2015 retirement of the Carbon Plant and 2008 NOx emission reductions from Hunter Unit 3 no doubt improved visibility at these parks to some degree, they will remain unlawfully impaired by NOx emissions from the BART-subject units under Utah's alternative. Without adequate BART controls for emissions of NOx, Utah fails to make reasonable progress toward the national visibility goal of *eliminating* human-caused visibility impairment in these lands.

Response: Visibility at the Class I areas is not unlawfully impaired - on December 14, 2012, EPA determined that Utah's SIP had met the reasonable progress requirements of the regional haze rule. EPA determined that "States adopting the requirements of 40 CFR 51.309 are deemed to have met the requirements for reasonable progress for the Class I areas on the Colorado Plateau. 40 CFR 51.309(a)...All of the Class I areas in Utah are on the Colorado Plateau. Therefore, the State met all reasonable progress requirements for the Class I areas in Utah." (77 FR 74367) As explained in earlier responses (14, 16, 19, and 21), the alternative process is fully allowed under the regional haze rule and is therefore not "unlawful" as claimed by the commenter.

23. [Conservation Organizations] Utah's alternative program does not meet the precedent established by the CAIR program in the eastern US. CAIR required future emission reductions. Further, in finding that CAIR satisfied the "greater reasonable progress" requirement for alternative programs, EPA noted specifically that BART, if implemented, would not be additive and achieve emission reduction over and above those achieved by CAIR, because CAIR and BART covered the same sources of haze emissions. Such source specific control requirements would simply result in a redistribution of emission reductions, as other EGUs could buy the excess allowances generated by the installation of controls at BART units. The net result would be the same level of emission reductions, but at a higher total cost, because the ability of the market to find the most cost effective emission reductions would be constrained. In contrast, because Utah's alternative program does not require emission reductions from BART sources, emission reductions under BART would be additive to the emission reductions already achieved through the Carbon closure and Hunter 3 emissions reductions. This fundamental difference alone nulls the Utah alternative. EPA's replacement rule for CAIR, CSAPR, has similar requirements. The 309 SO_2 Trading program was also designed to require emission reductions from all EGUs.

Response: First, the commenter's contention that Utah's alternative program does not require emission reductions from BART sources is incorrect. Utah's 2008 SIP required installation of low-NOx burners with overfire air on all four EGUs that are subject to BART. As described in the response to comment 4, NOx emissions from the four EGU's decreased 11,988 tons/year between 2002[3] and 2014 due to these controls. The NOx emission limits in the 2008 SIP also met the presumptive BART emission rates established in 40 CFR Part 51, Appendix Y. These NOx emission reductions have been fully implemented

[3] 2003 for Huntington Unit 2 because 2002 did not represent normal operations.

and have been providing visibility benefits since 2006. Second, 40 CFR 51.301(e)(2)(iv) allows inclusion of emission reductions due to control requirements adopted since 2002. The rule does not require "future" emission reductions, instead it requires "reductions that are surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP." Third, the comment misunderstands what EPA was saying in this discussion of additive benefits. Because some sources are subject to both CAIR and BART, you would not get double the emission reductions by requiring case-by-case BART in addition to CAIR. Instead, that approach would achieve the same reductions but would force those reductions to occur at specific plants, thereby losing the ability of the trading program to find the most cost-effective emissions reductions. The result would be the same level of emission reductions at a higher cost. While the proposed alternative measures in Utah's SIP is not a trading program there is a similar logic. The alternative does not mandate that the emission reductions occur at the higher cost source and instead takes advantage of the emission reductions required by the MATS rule to achieve even greater reductions at a lower cost.

24. [Conservation Organizations] EPA has approved several "BART alternatives" for certain power plant units in the western United States. However, unlike Utah's proposal, these BART alternatives required future emission reductions at the same power plant as an alternative to BART, rather than exclusively past emission reductions at other non-BART sources. Thus, Utah's proposed BART alternative deviates not only from EPA's regulations but also from EPA practice and precedent. Specifically, unlike Utah's proposal, each of the power plants with EPA approved BART alternative emission reductions have units that are subject to BART. Utah relies solely on past, unrelated emission reductions that occurred separate from and before the adoption of its regional haze SIP.

Response: Utah's RH SIP was adopted in 2003 and the base year of the SIP is 2002. The commenter's contention that the emission reductions in the alternative program occurred before the adoption of the SIP is incorrect. As described in the response to comment 21, 40 CFR 51.308(e)(2)(iv) fully allows credit for emission reductions due to measures adopted after the 2002 baseline date of the SIP. The regional haze rule does not limit inclusion in an alternative program to sources with units that are subject to BART. The fact that alternative programs cited by the commenter occurred at the same power plant or include only BART source is irrelevant and does not change the requirements of the rule.

25. [Conservation Organizations] Under EPA regulations, plans must show that any BART-alternative emission reductions are "resulting from" and "achievable through" the "trading program or alternative measure." Utah's BART alternative fails to meet these requirements. Utah points to no evidence in the administrative record indicating that 2008 NOx emission reductions at Hunter 3 were "resulting from" or "achievable under" Utah's BART alternative. Nor could they be. Utah did not even propose its BART alternative program until 2015—seven years after the Hunter 3 emission reductions. Likewise, the emission reductions at Carbon 1 and 2 were achieved on April 15, 2015—prior to the promulgation of Utah's BART alternative. The reductions were the result of the MATS rule. Thus, it is impossible that these emission reductions "resulted from" or were "achieved under" a program that had yet to be promulgated.

Response: The commenter is taking the terms "resulting from" and "achievable through" out of context. The rule does not require that the alternative program establish new requirements. EPA specifically envisioned allowing states the flexibility to rely on emission reductions from other CAA requirements as part of an alternative program. The preamble to the proposed rule states, "In some cases, emission reductions required to fulfill CAA requirements other than BART (or to fulfill requirements of a State law or regulation not required by the CAA) may also apply to some or all BART eligible sources. In such a situation a State may wish to determine whether the reductions thus obtained would result in greater reasonable progress than BART." (70 FR 44161) 40 CFR 51.308(e)(2)(iv) specifically allows the inclusion of measures adopted after the baseline date of the SIP (2002) to be included in the alternative program. In Utah's case, the alternative program is relying on the emission reductions "resulting from" and "achievable through" the closure of the Carbon Plant and the installation of low-NOx burners on Hunter Unit 3, as well as the installation of low-NOx burners with overfire air on the 4 BART-eligible EGUs and these reductions are made enforceable through emission limits in Section IX.H.22 and 23 of Utah's SIP.

Alternative To BART – Most Stringent NOx Controls Comparison

26. [PacifiCorp] Utah properly analyzed the Alternative Measure by comparing it against the most stringent, potential BART controls and limits (by assuming the installation of selective catalytic reduction ("SCR") at a 0.05 lb/MMBtu limit to control NOx at the Units). *See* Staff Report, Section VI, page 8. This allowed Utah properly to determine that the Alternative Measure provides greater reasonable progress against the most stringent, potential BART controls and limits. It is worth noting that several environmental groups agreed, in comments to the September 2014 proposed amendment by Utah to its regional haze SIP, that SCR with a NOx emission rate of 0.05 lb/MMBtu is appropriate as BART. *See* December 22, 2015 letter to Utah by HEAL Utah, National Parks Conservation Association, and Sierra Club at Section V.D. (pages 27 – 30). EPA has used a 0.05 lb/MMBtu NOx emissions rate for SCR for other regional haze SIP analyses, recently in New Mexico and Arizona. *See e.g.*, 79 Fed. Reg. 60,978, 60, 984 (New Mexico, Oct. 9 2014)("In promulgating the FIP, we evaluated the performance of both new and retrofit SCRs and determined that 0.05 lb/MMBtu on a 30-boiler-operating-day average was the appropriate emission limit for SCR at the San Juan Generating Station units. See 76 FR 491 and 76 FR 52388. New Mexico appropriately used this same rate in their cost and visibility analyses for the four-SCR scenario as part of its BART evaluation."); 79 Fed. Reg. 52,420, 52,431 (Arizona, Sept. 3, 2014)("We agree that our use of a 0.05 lb/MMBtu annual average design value for SCR is consistent with other BART determinations for coal-fired power plants."). EPA has agreed that even higher NOx emission rates can qualify as the most stringent emission rate for modeling visibility impacts. For example, EPA accepted state-mandated SCR emission rates of 0.07 and 0.08 in Colorado, as well as its SCR related analyses based on 0.07. 77 Fed. Reg. 76,871 (Colorado, Dec. 21, 2012). EPA also used 0.083 to 0.098 for the Reid Gardner Station in Nevada. 77 Fed. Reg. 50,936, 50,942 (Nevada, Aug. 23, 2012).

Response: DAQ agrees with the commenter that 0.05 lb/MMBtu is the appropriate emission rate for evaluating the emission reductions due to the most stringent potential NOx control for BART. The citations provided by the commenter have been added as a footnote in section VI of the report to provide further support for the emission rate used in the analysis.

27. [PacifiCorp] Assuming, as Utah concluded in its prior RH SIP, that NOx BART for each Unit is Low NOx Burner/Over-fire Air (LNB/OFA) with an emission limit of 0.26 lb/MMBtu, the Alternative Measure also results in greater reasonable progress than that assumption. This is because achieving greater reasonable progress as against the most stringent NOx technology and limits, by definition, demonstrates even greater reasonable progress as compared against less stringent technology and limits. The same is true by comparing the Alternative Measure against presumptive NOx limits in Appendix Y, and PacifiCorp's BART analyses referenced in Footnote 1 and included in SIP record.

Response: As noted in the Staff review, DAQ's use of SCR as a benchmark is not a determination that this technology is BART, it is merely a conservative approach to evaluate the effectiveness of the alternative program. When evaluating an alternative to BART under the RHR it is not necessary to make a final determination of BART. Instead the most stringent technology available is used as a benchmark.

28. [PacifiCorp] Utah properly conducted an analysis of the projected emission reductions achievable through the Alternative Program. *See* Staff Report, Section VII, page 9.

Response: Comment noted.

29. [NPS] UT DAQ's approach to comparing its BART Alternative to its "Most Stringent NO_X" scenario is not consistent with our understanding of the intent of the applicable regulations. Instead of creating a scenario that reflects application of the most stringent NO_X controls to all EGUs (Hunter Units 1 – 3, Huntington Units 1 & 2, and Carbon Units 1 & 2) "covered" in the trading population, only the BART-eligible EGUs are assumed to get the most stringent NO_X controls—Selective Catalytic Reduction (SCR)—even though other non-BART EGUs are included ("covered") in UT DAQ's Most Stringent NO_X trading population. This appears to be inconsistent with the intent of the 2006 rule requirement that the BART Alternative "trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART at the *covered sources.*" If the application of the UT BART Alternative is expanded beyond just BART sources, it seems appropriate to use UT DAQ's "Most Stringent" nomenclature and apply that approach to all "covered sources."

Response: The commenter has neglected to include the full text in the regional haze rule when referring to the term "covered sources." The full text says "each source within the State subject to BART and covered by the program." The most stringent NOx scenario assumes the installation of SCR on each source within the State subject to BART and covered by the program: Hunter Units 1 and 2, and Huntington Units 1 and 2.

30. [NPS] UT DAQ's conclusion that "...the alternative method may be deemed to achieve greater reasonable progress than BART" is based upon a significant deviation from accepted procedures. UT

DAQ used CAMD emissions from 2001 – 2003 to establish baseline emission rates for the Hunter and Huntington EGUs, but used 2012 – 2013 for the Carbon EGUs. According to UT DAQ, "This approach provides a more accurate representation of the effectiveness of this "control" option, as well as being in line with federal and state permitting guidelines under Title I (NSR)." In this case, the combined 2012 – 2013 average SO_2 and NO_x emissions used by UT DAQ were 25% higher than the appropriate 2001 – 2003 emissions.

Response: DAQ used current emissions from the Carbon Plant because these emissions are more representative of the reductions that will be achieved due to the closure of the plant. The difference in emissions referenced by the commenter is primarily due to increased SO_2 emissions from the plant during this time period. The Carbon Plant was built in the 1950s and was grandfathered under Utah's permitting rules. The plant was equipped with ESPs to control particulate, but had no controls for SO_2. The increasing SO_2 emissions are therefore the direct result of increased sulfur content in the coal that is combusted in the plant. Use of 2001-2003 emissions would underestimate today's benefit. In either case the emission year used would not have affected the overall conclusion because emissions under the alternative would still be lower than the most stringent NOx scenario even if 2001—2003 average emissions were used for the Carbon Plant.[4]

The modeled emission rate for the Carbon Plant is not based on annual emissions. Instead, it is based on the highest daily emissions in the time period. Because there are day to day fluctuations in the sulfur content of the coal the effect of increasing sulfur is not a factor because the highest days are comparable. The SO_2 emissions on the highest day in 2001-2003 were 19.024 tons (highest day for each unit averaged) while the emissions on the highest day in 2012-13 were 18.957 tons. If the approach suggested by the commenter were used, the model would have shown slightly greater visibility benefits due to the closure of the Carbon Plant.

31. [NPS] It is generally assumed that a modern SCR can achieve at least 90% NO_x reduction, and at least seven recent retrofits are meeting 0.04 lb/mmBtu (or lower) on an annual average basis. Considering that PacifiCorp's BART EGUs are already achieving less than 0.30 lb/mmBtu on an annual average, it is realistic to assume that addition of SCR could reduce those emissions to not more than 0.04 lb/mmBtu (annual average).

Response: DAQ disagrees with this comment. While the commenter is correct that a modern SCR can achieve a 90% reduction in NOx emissions, there are two errors in the commenter's presented logic. The first error is in the use of historical actual emission data to simply set an emission limit. This is not the proper approach toward setting a best available retrofit technology (BART) emission limit.

BART, as defined by §169A [42 USC 7491]:

> *in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into*

[4] Combined SO_2 and NOx average emissions in 2001-3 were 9,102 tons and in 2012-13 were 11,352 tons. The 2,250 ton difference between these time periods is less than the 2,283 ton difference between the alternative and the most stringent NOx scenario (PM reductions not included).

consideration the costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

Therefore, simply setting a limit based upon an arbitrary fraction of past performance ignores the very process defined within the CAA.

The second error in the comment is in the selection of averaging periods. The commenter has specifically chosen to present the emission limit on an "annual average basis." However, the values used within DAQ's analysis were presented using a 30-day rolling average basis. This is a much shorter time frame, and simply lowering the limit without taking this averaging period into account can greatly affect the stringency of the limit. Typically in the permitting realm, the longer the averaging period, the lower the limit can be set. This is because the longer data collection period tends to lessen the impact of outliers on the overall average.

EPA itself has used a 0.05 lb/MMBtu NOx emissions rate for SCR for other regional haze SIP analyses, recently in New Mexico and Arizona. See e.g., 79 Fed. Reg. 60,978, 60, 984 (New Mexico, Oct. 9 2014)("In promulgating the FIP, we evaluated the performance of both new and retrofit SCRs and determined that 0.05 lb/MMBtu on a 30-boiler-operating-day average was the appropriate emission limit for SCR at the San Juan Generating Station units. See 76 FR 491 and 76 FR 52388. New Mexico appropriately used this same rate in their cost and visibility analyses for the four-SCR scenario as part of its BART evaluation."); 79 Fed. Reg. 52,420, 52,431 (Arizona, Sept. 3, 2014)("We agree that our use of a 0.05 lb/MMBtu annual average design value for SCR is consistent with other BART determinations for coal-fired power plants.") EPA has agreed that even higher NOx emission rates can qualify as the most stringent emission rate for modeling visibility impacts. For example, EPA accepted state-mandated SCR emission rates of 0.07 and 0.08 in Colorado, as well as its SCR related analyses based on 0.07. 77 Fed. Reg. 76,871 (Colorado, Dec. 21, 2012). EPA also used 0.083 to 0.098 for the Reid Gardner Station in Nevada. 77 Fed. Reg. 50,936, 50,942 (Nevada, Aug. 23, 2012).

32. [NPS] NPS provided modeling based on their determination of the correct comparison. The modeling for the most stringent NOx scenario included the IPP units 1 and 2, used a lower emission rate for SCR and applied that rate to all of the EGUs (Hunter, Huntington, Carbon, IPP). Using these assumptions and adding up the additional improvement that would occur at all 9 Class I areas resulted in 7.1 dV greater improvement that what was modeled by DAQ under the alternative.

Response: The results of the NPS modeling are not relevant because that modeling was performed using incorrect emission rates. The following errors with the NPS modeling are noted: 1, IPP was included in the analysis even though this plant is not part of the alternative program (see response to comment 19). 2. The SCR emission rate was incorrectly used for all EGUs, rather than those subject to BART (see response to comment 29). 3. Finally, where an SCR emission rate was applied, an incorrect emission value was chosen (see response to comment 31). The modeling result were not relevant to the proposal and were therefore not considered.

33. [Conservation Organizations] Utah's projected emission reduction analysis wrongly assumes that Carbon Units 1 and 2 could, in perpetuity, continue to emit NOx, SO2, and PM at the same rate the plant emitted these pollutants in 2012-2013. More specifically, Utah's so-called "Most Stringent NOx" scenario—purportedly reflecting the emissions from Hunter, Huntington and Carbon if BART were implemented—has Carbon Units 1 and 2 emitting NOx (3,348 tpy total), SO2 (8,005 tpy total), and PM (573 tpy total) at 2012-2013 emission rates through at least 2064. This emission scenario is arbitrary and both factually and legally incorrect.

Response: The comment is factually incorrect and is not supported by the requirements of the regional haze rule. The proposal does not contain a projection of emissions for any of the EGUs to 2064 as implied by the commenter. The emission rates evaluated are based on current actual emissions and therefore reflect conditions as they exist today, not at some future date. The regional haze rule does not require an emission projection to 2064 for this analysis, and EPA has not required such a projection for other alternative programs, including CAIR/CSAPR. Baseline emissions for the Hunter and Huntington plants are based on 2001-2003 actual emissions, consistent with the modeling requirements of 40 CFR Part 51 Appendix Y. As discussed in the response to comment 30, current emissions for the Carbon plant were used in the baseline to better represent the emission reductions that would occur due to the closure of the plant. The most recent available actual emissions (2012-13 at the time the analysis was completed) were used for emissions under the alternative. The creditable emission reductions since the 2002 baseline inventory were included in the alternative analysis, consistent with 40 CFR 51.308(e)(2)(iv).

34. [Conservation Organizations] The Carbon Plant was permanently closed on April 15, 2015 and is in the process of being dismantled (April 15, 2015 Newspaper Article). Thus, Utah's assumption that these units could continue to emit pollutants at 2012-2013 emission rates is arbitrary, factually inaccurate, and defies reality.

Response: The regional haze rule allows emission reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP (2002). The reductions due to the closure of the Carbon Plant are due to a measure adopted under the CAA since 2002 and are clearly creditable under those criteria. The Staff Review notes that the Carbon Plant was closed due to the high expense of complying with the MATS rule. A challenge to this rule is currently under consideration by the Supreme Court. If the Supreme Court overturned or stayed the MATS rule, PacifiCorp could reopen the Carbon Plant under its existing operating permit and continue operating indefinitely. For this reason enforceable measures were included in the SIP to lock in the substantial emission reductions that were relied upon in the alternative program.

35. [Conservation Organizations] Utah arbitrarily assumed that if BART, and not the alternative program, were required at Hunter and Huntington, PacifiCorp would somehow remove the most recently installed LNB from Hunter Unit 3 and emit NOx rates higher than its currently permitted limit. As a result, Utah significantly overstated the overall haze-causing emissions that would occur under the BART benchmark scenario.

Response: Utah never assumed that the emission controls installed on Hunter Unit 3 would be removed as implied by the commenter. The emission limits for Hunter Unit 3 are enforceable under the approval order and operating permit for the unit. The regional haze rule allows credit for emission reductions resulting from measures adopted after the baseline date of the SIP (2002). The installation of low-NOx burners at this unit in 2008 is clearly creditable. Allowing credit for emission reductions due to other measures does not mean that those measures would disappear as implied by the commenter.

36. The Conservation Organizations again employed the services of professional air quality dispersion modeler Dr. Andrew Gray to assess whether the corrected BART scenario would achieve greater reasonable progress than would Utah's BART alternative. Dr. Gray's latest visibility modeling largely used the same emission inputs as Utah. The only major difference between Dr. Gray's modeling and Utah's was the SO2 emission inputs for Carbon Units 1 and 2. Instead of adopting Utah's assumption of uncontrolled SO2 emissions from these units into the future in the Most Stringent NOx scenario, Dr. Gray used SO2 emissions that reflected compliance with MATS (Gray modeling scenario MATS#1 and MATS#2) The only difference between the two scenario's run by Dr. Gray is that the MATS#1 scenario does not allow for a NOx emission reduction credit at Hunter 3 resulting from installation of LNB in 2008. Dr. Gray's modeling results clearly show that Utah's BART alternative will not achieve greater reasonable progress than would operation of SCR. Additionally, visibility actually declines under Utah's BART alternative and thus is in violation of 40 C.F.R. § 51.308(e)(3)(i).

Response: The modeling analysis provided by the commenter did not use the correct emission rate for Carbon Units 1 and 2 to compare the alternative measures to the most stringent NOx controls available. 40 CFR 51.308(e)(2)(i)(C) requires an "analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each source within the State subject to BART and covered by the alternative program." DAQ's analysis complied with this requirement by modeling the emission reductions that would be achieved due to the most stringent NOx controls available, SCR, on the four EGUs that are subject to BART. The commenter included additional emission reductions at Carbon 1 and 2 due to the MATS rule that go beyond BART and therefore significantly overestimated the emission reductions achievable for each source within the State subject to BART. The modeling results were therefore not relevant to the proposal and were not considered.

Alternative to BART Weight of Evidence Standard

37. [Wasatch Clean Air Coalition] We strongly support the current proposed amendment, with the better than BART analysis for NOx that acknowledges the early investment & installation of pollution control at the Hunter Units 1 & 2 and Huntington Units 1 & 2. Utah & the entire region have benefited from the early emission reductions of mercury, PM, SO2 and NOx. These early reductions allowed the discovery that the visibility model over-predicts visibility improvements from NOx reductions. This finding is very important to future regional haze planning.

Response: DAQ agrees that the early reductions have highlighted uncertainties regarding the effect of NOx emission reductions on ammonium nitrate levels during the winter. To improve our understanding

of the role of ammonia in formation of ammonium nitrate, DAQ has funded ammonia monitoring at Canyonlands beginning in May, 2014, and we anticipate that this data will be useful in future visibility analyses. The western states are already beginning planning for the next regional haze SIP that is due in 2018, and this issue will be one of many addressed through that process as the states evaluate progress that occurred during the first planning period and develop strategies to achieve progress during the 2018-2028 planning period.

38. [PacifiCorp] EPA described the clear weight of evidence standard as follows: "Weight of evidence" demonstrations attempt to make use of all available information and data which can inform a decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible. Factors which can be used in a weight of evidence determination in this context may include, but not be limited to, future projected emissions levels under the program as compared to under BART, future projected visibility conditions under the two scenarios, the geographic distribution of sources likely to reduce or increase emissions under the program as compared to BART sources, monitoring data and emissions inventories, and sensitivity analyses of any models used. (Emphasis added.) See 71 Fed. Reg. 60,612, 60,622 (Oct. 13, 2006). EPA recently confirmed the availability of the "other alternative measure" based on the "clear weight of evidence" approach in approving a "BART Alternative" under the Arizona regional haze state implementation plan. 80 Fed. Reg. 19220 (April 10, 2015).

Response: The referenced language from EPA's 2006 revisions to the regional haze rule and the Arizona SIP has been added to Section VIII of the Staff Review to further support the use of this approach when evaluating the alternative measures.

39. [PacifiCorp] The Alternative Measure is projected to reduce overall NOx, SO_2 and PM emissions by 2,856 more tons per year than would be reduced assuming the installation of the most stringent NOx technology at the most stringent potential NOx emission limit. EPA has approved, or proposed approval, of other BART Alternatives that included "inter-pollutant trading" when SO_2 levels were lowered. 79 Fed. Reg. 33,438, 33,440-41 (Washington, June 11, 2014); 79 Fed. Reg. 56,322, 56,328 (Arizona, Sept. 19, 2014).

Response: The reference to other EPA approvals has been added as a footnote in Section VII of the Staff Review to provide further support for using a similar approach when evaluating the alternative measures.

40. [PacifiCorp] Based on extensive dispersion modeling using CALPUFF, Utah determined that the Alternative Measure projects better visibility conditions using a number of different metrics, including: (i) better visibility improvement because of the focus on SO_2; (ii) more days of visibility improvement; (iii) better average deciview improvement across Class 1 Areas; and (iii) better 90th percentile average deciview improvement across Class 1 Areas. EPA has proposed approval of an Alternative Measure for the Apache Generating Station in Arizona on similar "weight of evidence" grounds. 79 Fed. Reg. 56,322, 56,327 (Sept. 19, 2014). EPA has also approved a similar Alternative

Measure in Washington based, in part, on a reduction in the number of days of impairment greater than 0.5 dv and 1.0 dv. 79 Fed. Reg. 33,438, 33,440-42 (June 11, 2014).

Response: The citations to EPA's approval of a similar weight of evidence approach has been added as a footnote in Section VIII.B.5 of the Staff Review.

41. [PacifiCorp] Because the BART-eligible Units and the Units covered under the Alternative Program are the same, and because Hunter Unit 3 and Carbon Unit 1 and Unit 2 are in the same general geographic location as the Units, Utah properly concluded that emissions under the Alternative Measure impact "the same general area" as would be impacted by the application of the most stringent NOx BART surrogate.

Response: Comment noted.

42. [PacifiCorp] The Alternative Program provides emission reductions earlier than required, "providing a corresponding early and on-going visibility improvement." *See* Staff Review, Section VII, page 9. The U.S. Circuit Court of Appeals for the 10th Circuit explicitly acknowledged that the consideration of early reductions was proper as part of a qualitative or clear weight of evidence approach to determining greater reasonable progress. *WildEarth Guardians v. E.P.A.*, 770 F.3d 919, 938 (10th Cir. 2014).

Response: A reference to the Court opinion has been added as a footnote to Section VII.

43. [PacifiCorp] The Alternative Program provides "greater reductions of SO_2, the most significant anthropogenic pollutant affecting Class I areas on the Colorado Plateau that affects visibility year-round...." *See* Staff Review, Section VII, page 9. EPA has approved, or proposed approval, of BART Alternatives on similar grounds. 79 Fed. Reg. at 56,327-28; 79 Fed. Reg. at 33,440-42.

Response: The suggested citations have been added as a footnote to Section VII.

44. [PacifiCorp] In addition, PacifiCorp encourages Utah to specifically recognize that the Alternative Measure includes "non-BART sources" (i.e., Carbon Unit 1 and Unit 2 (PM, NOx and SO_2) and Hunter Unit 3 (NOx)). The Tenth Circuit Court recognized non-BART sources as a legitimate factor to consider in a "weight of the evidence" analysis. *WildEarth Guardians v. E.P.A.*, 770 F.3d 919, 935-36 (10th Cir. 2014).

Response: The requested language has been added to section V of the Staff Review.

45. [EPA] In Section VIII.C states that PacifiCorp did not quantify the energy penalty associated with SCR. However, PacifiCorp did quantify the energy penalty in terms of both power (kW) and cost ($/yr) in Appendix A of its August 4, 2014 five factor analysis. Also, it would be helpful if Utah could quantify or, at least expand on, the solid wastes that would be eliminated from the Carbon plant when shutdown.

Response: The following information from PacifiCorp's August 4, 2014 BART Analysis Update has been added to the Section VIII in response to this comment.

PacifiCorp quantified the energy penalty associated with SCR in their August 4, 2014 BART Analysis Update, Appendix A. The energy penalty was included as part of the total cost for installing SCR on each of the units.

	Energy Penalty	
	kW	$/yr
Hunter Unit 1	2,090	$494,247
Hunter Unit 2	2,090	$494,247
Huntington Unit 1	2,182	$516,098
Huntington Unit 2	2,182	$516,098
Total	**8,544**	**$2,020,690**

The Carbon Plant, like most coal-fired power plants, produces solid wastes in the form of fly ash from the ESPs controlling both units, as well as the bottom ash conveyors which clean the residuals from both boilers. This ash is currently being landfilled. The plant also runs water through both steam generating units (the boilers), as well as a pair of cooling towers. This uses water, and has an associated wastewater discharge. Hauling the ash to landfill requires additional fuel use and water or chemical dust suppression for minimization of fugitive dust. Finally, for maintenance and emergency purposes, the plant has a number of emergency generators, fire pumps, and ancillary equipment - all of which must be periodically operated, tested and maintained - with associated air emissions, fuel use, painting, and the like. All of these non-air quality impacts are reduced as the result of the closure of the Carbon Plant.

Modeling Results

46. [EPA] We suggest clarifying in the text that accompanies the data in Table 6 of the staff review, Average Δdeciview across all Class I areas, what it represents and how it was calculated.

Response: The following information has been added to the description of Table 6 in response to this comment. The average impact was calculated by averaging all modeling results for each year and then calculating a three year average from the annual average. The average deciview metric shows the benefit that will be achieved day in and day out in the Class I areas. This information is valuable as part of the overall weight of evidence because reductions in SO_2 and reductions in NOx improve visibility at different times of year. Ammonium sulfate is an issue year round while ammonium nitrate is primarily an issue in the winter. This means that the benefits of SO_2 reductions are more apparent when looking at longer averaging periods while the benefits of NOx reductions are more apparent when looking at the worst days. The average monitoring data shown earlier in this document in Figure 1 illustrates this difference. As can be seen in the figure, ammonium sulfate is the most significant visibility impairing pollutant on average. As explained in Section VIII.A, DAQ has less confidence in the modeled results in

the winter when the worst days occur because emission reductions have not led to the expected improvements during that time period.

47. [EPA] Table 8 of the staff review, Average 98th percentile (24th High) across all three years, should show the 22nd high as opposed to the 24th high for the three-year period.

Response: Table 8 has been modified to show the 22nd high as requested.

48. [EPA] Table 9 of the staff review should also include the 98th percentile in the highest year for the base case.

Response: The information has been added to Table 9 as requested.

49. [EPA] Utah should clarify in Section XI that the state has chosen to use a weight of evidence approach under 40 CFR 51.308(e)(2)(i)(E), as described in section VIII of the staff review. We understand that the separate visibility analysis described in section VIII is part of the weight-of-evidence demonstration, and is not intended to provide the type of modeling demonstration that would otherwise be required under 40 CFR 51.308(e)(3).

Response: The following language has been added to Section XI in response to this comment. Utah has chosen to use a weight of evidence approach under 40 CFR 51.308(e)(2)(i)(E), as described in section VIII of the staff review. The separate visibility analysis described in section VIII is part of the weight-of-evidence demonstration, and is not intended to provide the type of modeling demonstration that would otherwise be required under 40 CFR 51.308(e)(3).

50. [NPS] In its 2/13/2015 "Review of 2008 PM Determination and Recommended Alternative to BART for NO_x," UT DAQ presented CALPUFF modeling results in the form of several different metrics. Only Tables 8 and 9 use model results for the 98th percentile (8th highest impact) as required by Appendix Y of the BART Guidelines; the metrics presented in Tables 4-7 do not conform to EPA Guidance.

Response: The comment is incorrect. The alternative to BART is not evaluated through a 5-factor analysis as would occur for a case-by-case BART determination under 40 CFR 51.308(e)(1) using the methodology described in Appendix Y of the BART Guidelines. Instead, a weight of evidence approach is used, as allowed under 40 CFR 51.308(e)(2). The weight of evidence approach allows a broader analysis that is more appropriate for this circumstance where different pollutants that affect visibility at different times of year are compared. EPA further described the weight of evidence approach in the preamble to the 2006 revisions to the regional haze rule. "Weight of evidence demonstrations attempt to make use of all available information and data which can inform a decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible." (71 FR 60622)

51. [NPS] Tables 4 & 5 showed that there would be fewer days across the nine Class I areas evaluated when the impact of its BART Alternative exceeded 1.0 and 0.5 deciview (dv), respectively, compared to the impacts of its "Most Stringent NO_x" control scenario. However, this metric does not accurately compare improvements to visibility. For example, if the results of hypothetical Scenario A show ten

days at 0.9 dv and hypothetical Scenario B show ten days at 0.6 dv, there would be no change in the number of days exceeding either 1.0 or 0.5 dv, even though visibility has improved by 0.3 dv. On the other hand, if the results of Scenario A show ten days at 0.6 dv and Scenario B show ten days at 0.4 dv, the metric would show a greater reduction of ten days above the 0.5 dv metric, even though the amount of visibility improvement is less (0.2 dv versus 0.3 dv). This method cannot be used to compare control strategies because it is too sensitive to the model result versus the metric threshold.

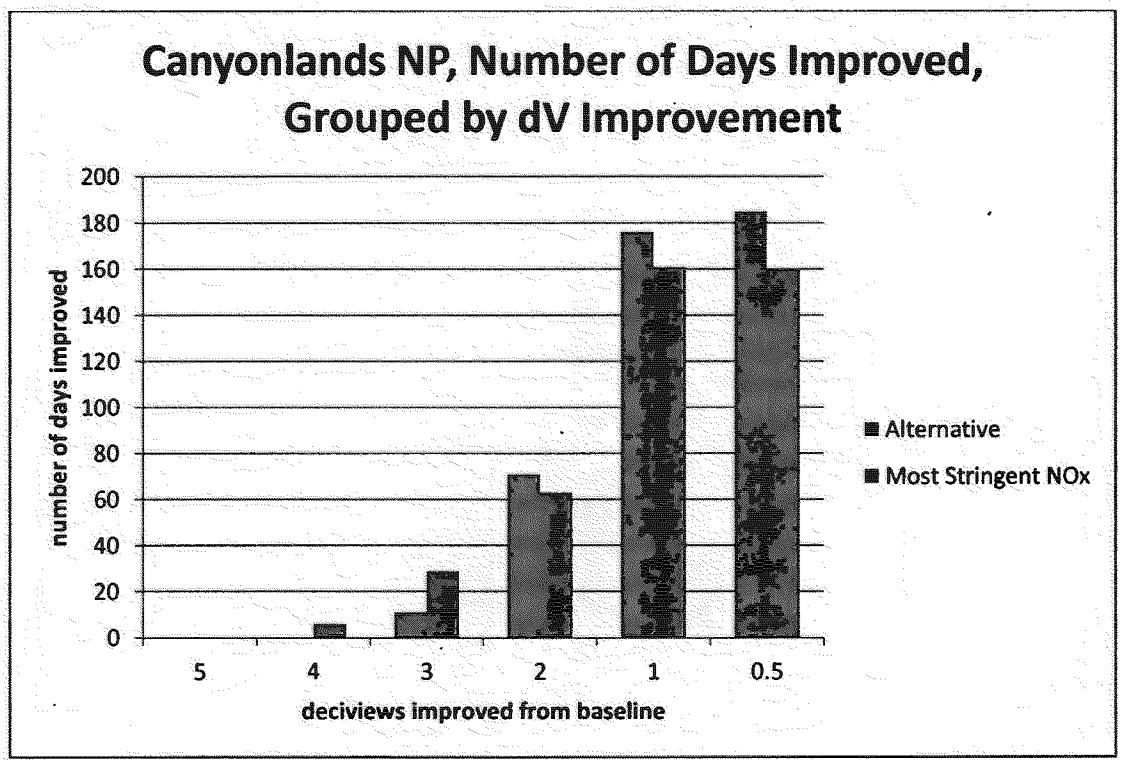
Response: The number of days with an impact of greater than 1.0 dV and 0.5 dV is one of the standard outputs from CALPOST and has been commonly referenced in other BART determinations. However, to address the concerns raised in this comment, DAQ staff evaluated the number of days improved using a different methodology. Instead of focusing on the result (number of days with an impact above a certain threshold) the analysis focused on the improvement (number of days that are improved by a specific amount). The visibility impairment in deciviews for each alternative was subtracted from the basecase impairment for each day in the three year modeling period. The results were then grouped by deciview improvement (any improvement greater than or equal to 4 dV and less than 5 dV was included in the 4 dV category and so on). The following groups were used: 5, 4, 3, 2, 1, 0.5 dV. The following summary tables were added to the Staff Review in response to this comment.

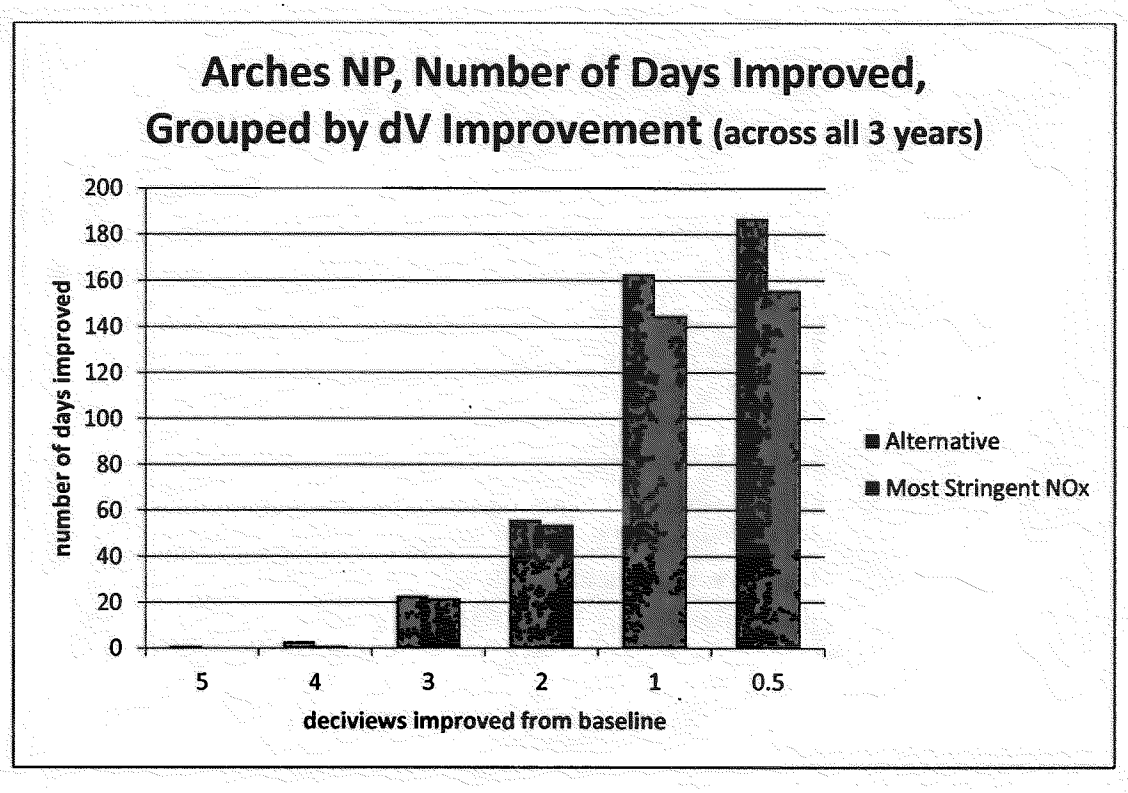
Number of Days that Improved ≥ 0.5 dV impact (across all 3 years)		
	Alternative	Most Stringent NOx Control
Arches	433	378
Black Canyon	138	116
Bryce Canyon	66	62
Canyonlands	443	419
Capitol Reef	215	212
Flat Tops	181	144
Grand Canyon	78	78
Mesa Verde	138	132
Zion	37	34
Total	1729	1575

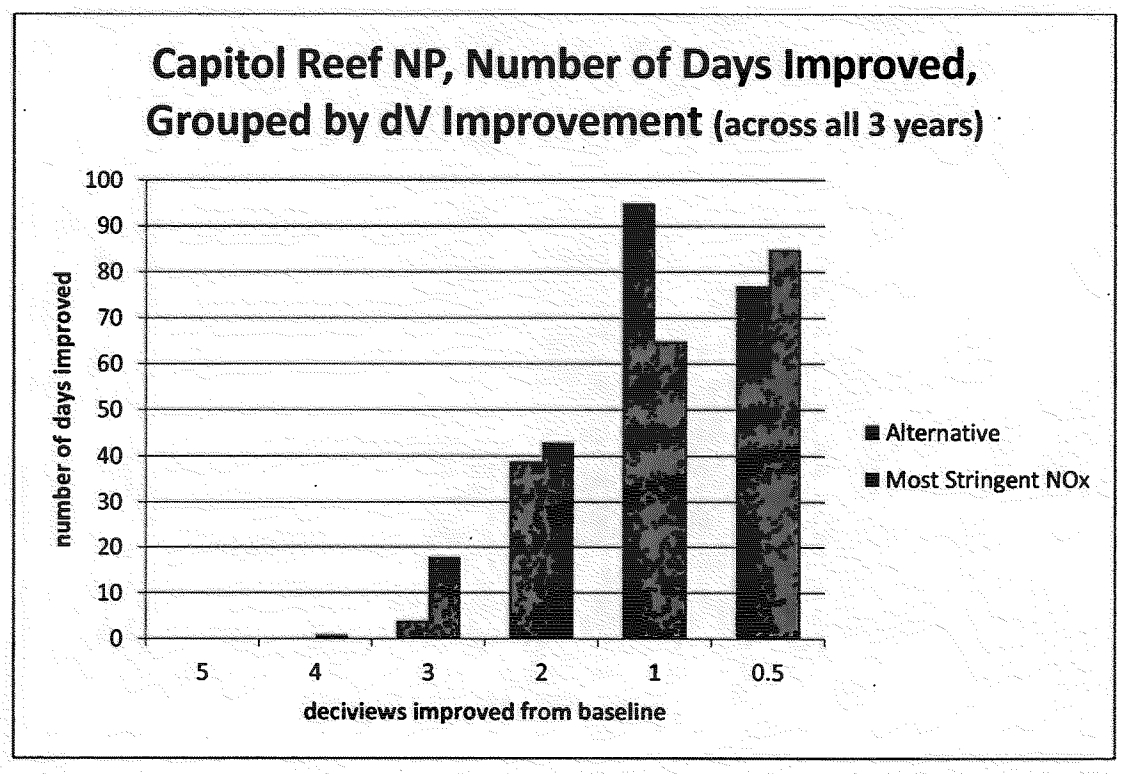
Number of Days that Improved ≥ 1.0 dV impact (across all 3 years)		
	Alternative	Most Stringent NOx Control
Arches	246	222

Black Canyon	51	43
Bryce Canyon	27	28
Canyonlands	258	259
Capitol Reef	138	127
Flat Tops	63	51
Grand Canyon	33	35
Mesa Verde	51	53
Zion	18	19
Total	885	837

The results are presented in more detail in the following figures for the three most impacted Class I areas: Canyonlands, Arches, and Capitol Reef. Similar figures for the other Class I areas are included in the TSD. The groupings showing dV improvement of 3 or greater are almost all days during the winter months of December – February. The largest number of days improved are found in the 1 dV group and the .5 dV group and contain days throughout the year, including the high visitation period of March – November.







52. [NPS] Table 6 uses an average delta-dv across all Class I areas. This approach has been consistently rejected by EPA because it does not capture the magnitude of the impacts, but, instead, simply dilutes the impact by spreading it across the Class I area. Under this approach, for example, the 4.1

dv (98th percentile) impact at Capitol Reef NP becomes a 0.4 dv impact averaged across Capitol Reef NP. In effect, UT DAQ has artificially diluted an impact that would be clearly perceptible to an impact that is considered imperceptible.

Response: The commenter did not provide references to EPA actions that rejected the use of average visibility values. The alternative to BART was not evaluated through a 5-factor analysis as would occur for a case-by-case BART determination under 40 CFR 51.308(e)(1) using the methodology described in Appendix Y of the BART Guidelines. DAQ used a weight of evidence approach, as allowed under 40 CFR 51.308(e)(2). The weight of evidence approach allows a broader analysis that is more appropriate for this circumstance where different pollutants that affect visibility at different times of year are compared. EPA further described the weight of evidence approach in the preamble to the 2006 revisions to the regional haze rule. "Weight of evidence demonstrations attempt to make use of all available information and data which can inform a decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible." (71 FR 60622)

The average impact is only one metric evaluated as part of the broader weight of evidence evaluation. The average deciview metric shows the benefit that will be achieved day in and day out in the Class I areas. This information is valuable as part of the overall weight of evidence because reductions in SO_2 and reductions in NOx improve visibility at different times of year and at different Class I areas. Ammonium sulfate is an issue year round while ammonium nitrate is primarily an issue in the winter. This means that the benefits of SO_2 reductions are more apparent when looking at longer averaging periods while the benefits of NOx reductions are more apparent when looking at the worst days. As described in the response to comment 46, additional text has been added to better describe how the average values were calculated and why they are important.

53. [NPS] Table 7 presents 90th percentile values which have been consistently rejected by EPA. For example, this approach converts a perceptible 1.3 dv (98th percentile) impact at Mesa Verde NP to an imperceptible 0.4 dv impact.

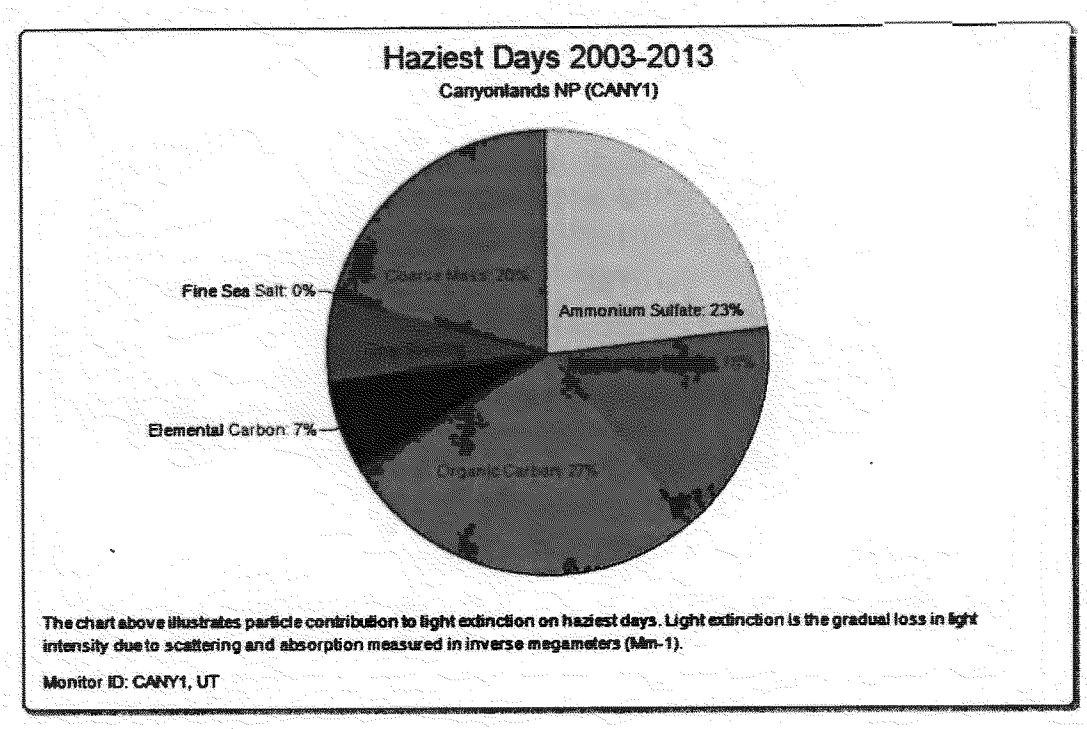
Response: The 90th percentile is only one metric evaluated as part of the broader weight of evidence evaluation. The following text has been added to the document to better describe the usefulness of this metric. "This metric shows that even on higher impact days the benefits of the alternative are comparable to the most stringent NOx scenario. Ammonium sulfate affects visibility year round and also impacts visibility on days with greater impairment. The alternative scenario that contains greater SO_2 reductions achieves comparable results to the most stringent NOx scenario that contains greater NOx reductions on these impaired days.

54. [NPS] The most appropriate comparative statistical metrics consistently used by other states and EPA are the 98th percentile values presented in Tables 8 & 9, both of which show that the cumulative impact of UT DAQ's BART Alternative does not make more reasonable progress than the Most Stringent NO_x scenario. Furthermore, Table 8 shows that UT DAQ's BART Alternative fails this test at seven of nine Class I areas, while Table 9 shows failure at five of nine Class I areas. Thus the UT DAQ BART Alternative does not meet current regulatory "clear weight of evidence" requirements.

Response: The 98th percentile value is only one metric evaluated as part of the broader weight of evidence evaluation. As the commenter noted, this metric shows greater visibility improvement under the most stringent NOx scenario. The weight of evidence analysis is not based on just one metric and instead takes a broader approach to consider multiple metrics, monitoring results, and other factors. The 98th percentile modeled values show greater improvement under the most stringent NOx scenario, while other metrics such as the number of days improved, annual average, and 90th percentile modeled values show greater improvement under the alternative scenario.

The ammonium nitrate impacts are greatest in the winter and therefore the 98th percentile metric is weighted towards wintertime impacts. The Staff Review notes that there is greater uncertainty regarding the effect of NOx reductions on wintertime nitrate values because past emission reductions have not resulted in corresponding reductions in monitored nitrate values during the winter months. Further research is needed to better understand the visibility benefits of NOx reductions and DAQ anticipates that regional modeling for the next RH SIP that is due in 2018 will improve our understanding of this important issue. DAQ has greater confidence in the visibility improvement due to reductions of SO_2 because past reductions have resulted in corresponding reductions in monitored sulfate values throughout the year. The following language has been added to the Staff Review to further explain that the highest impact modeled days do not necessarily correspond to the highest impact monitored days because the model does not include other significant sources of visibility impairing pollutants.

The CALPUFF modeling that is summarized in this document does not include impacts from other significant sources such as wildfire, windblown dust, other stationary sources, and mobile sources. As can be seen in Figure 9, organic carbon (fire) and coarse mass (windblown dust) are greater contributors to haze than ammonium nitrate on the 20% worst days. So, the modeled results do not give a complete picture of the visibility improvements that will be seen by visitors to Class I areas, especially on the worst days that are impacted by other emission sources.



55. [Conservation Organizations] In the table, "98th Percentile in Highest Year", the delta-dV for Capitol Reef under the Most Stringent NOx scenario was incorrectly listed as 3.39. The correct value should be 4.12. The average delta-dV for all Class I areas was also therefore incorrectly computed for this scenario to be 2.61; the correct average for all Class I areas should be 2.70.

Response: The table has been corrected.

56. [Conservation Organizations] In the final table in Appendix D (showing the 98th percentile delta-dV for all three modeled scenarios for each year and at each Class I area), the modeled 2003 average delta-dV for all Class I areas under the Baseline scenario was incorrectly computed to be 4.156; the correct "Class I Average" delta-dV for 2003 Baseline should be 3.823. The visibility improvements (relative to Baseline) for the Alternative and Most Stringent NOx scenarios, which are computed as the difference between those scenarios and the Baseline were also therefore incorrectly computed in the table.

Response: The table has been corrected.

Monitoring

57. [NPS] UT DAQ argues that past emission reductions at the four BART EGUs have not resulted in corresponding reductions in monitored nitrate values at Canyonlands NP. Figure 6 in the TSD illustrates that ammonium sulfate levels have decreased in winter months, while ammonium nitrate is trending up in winter months. These nitrate trends do not necessarily lead to the conclusion that additional NO_x controls for the BART sources will not be effective. UT DAQ has not accounted for more ammonium being available to form ammonium nitrate in winter months due to decreases in ammonium sulfate, nor the increase in NO_x emissions (e.g. oil and gas development adjacent to Canyonlands NP) that offset emission reductions. Such an increase in emissions from this source category is all the more reason to obtain NO_x reductions wherever they are technically and economically feasible.

Response: DAQ agrees with the commenter that reductions in available SO_2 will free up ammonium to react with available NOx. This issue was discussed in the 5-factor analysis that was presented to the Board in October 2014. The shift from the formation of ammonium sulfate to ammonium nitrate is important because in ammonia-limited conditions emission reductions may not lead to visibility improvement because there is not enough ammonia available to react with all of the SO_2 and NOx available in the area. The ammonia levels in Southern Utah are very low in the winter as can be seen from ammonia monitoring data from Canyonlands and Navajo Lake in New Mexico. Ammonium nitrate levels are low most of the year and are only significant during the winter months, so if NOx emission reductions do not lead to visibility improvements in the winter, the overall effect may not be as great as expected. Ammonium sulfate, on the other hand, is an issue year round. For this reason, DAQ has more confidence that reductions in SO_2 will lead to real visibility improvement. The improvements due to NOx reductions are more uncertain. To better explain the issue, information from the proposed 5-factor analysis has been added to the Staff Review in response to this comment.

DAQ also considered the effect of changes in NOx emission from other sources in the region as a possible explanation for the increase in ammonium nitrate levels. A discussion about regional NOx emissions was included in the 5-factor analysis that was presented to the Board in October 2014 and has been added to the Staff Review in response to this comment. NOx emissions are decreasing significantly at other EGUs in the area. Mobile source NOx emissions are decreasing nationwide due to implementation of the Tier 1 and Tier 2 emission standards and should continue to be reduced through the implementation of Tier 3 emission standards. Oil and gas emissions are increasing in some areas, and this was considered as a possible impact, but the overall scale of the emission increase is small when compared to the decrease in emissions from EGUs in the region.

The largest increase in NOx emissions is occurring in the Uinta Basin, located to the north of Utah's Class I areas. It is worth noting that during the winter months when ammonium nitrate levels are increasing at Canyonlands, a significant portion of the Uinta Basin emissions are trapped under a tight inversion layer throughout much of the winter. Extensive research through the multi -year Uinta Basin Ozone Study (UBOS) has indicated that there is little exchange between the air below and above the inversion layer when an inversion is in place. The emissions are transported out of the Uinta Basin during

significant storm events that break up the inversion. These storm events affect the entire region and are unlikely to transport significant emissions to nearby Class I areas. DAQ is currently working with EPA, the Ute Tribe, and producers in the Uinta Basin to improve the oil and gas inventory.

The fact that ammonium nitrate levels are decreasing during most of the year, but are increasing during the winter is the best indication that the increase in ammonium nitrate is not due to changes in emissions because the emission changes are not seasonal. If emissions were increasing the effect should be seen year round.

58. [EPA] We understand that Utah may consider additional ammonia monitoring information and conduct further analysis. As that information and analysis are not available, we have not included comments on these issues; and we welcome the opportunity to provide comments in the future.

Response: DAQ has added additional information regarding the potential effects of ammonia limiting conditions to the Staff Review in response to comment 57. The purpose of the discussion of ammonia is to explain why DAQ has more confidence in the effect of SO_2 reductions. Regional photochemical modeling for the next regional haze SIP that is due in 2018 will provide a more in depth opportunity to examine the effect of NOx reductions during the winter. DAQ looks forward to working with EPA in the future to better understand this issue.

Alternative to BART – Timing of Reductions

59. [PacifiCorp] Utah properly included in the SIP Revision a requirement that the emissions reductions associated with the Alternative Measure "take place during the period of the long-term strategy for regional haze." Noting that the end of the period of the long-term strategy will take place in 2018, Utah concludes that the Alternative Measure "will be fully implemented prior to 2018" in satisfaction of this requirement. By including the Alternative Program requirements in SIP Section IX, Parts H.21 and H.22, Utah also assured that enforceable emission limits, administrative and technical procedures for implementing the Alternative Measure, and rules for accounting and monitoring emissions, and procedures for enforcement are included in the SIP Revision.

Response: Comment noted.

60. [PacifiCorp] Because the applicable rule requires that emission reductions associated with the Alternative Measure "take place during the period of the long-term strategy for regional haze" which does not end until 2018, PacifiCorp questions whether the August 15, 2015 closure deadline proposed by Utah is appropriate. Instead, PacifiCorp believes that it is more appropriate for Utah to require closure of the Carbon Plant for purposes of the Revised SIP on a date that is no later than the end of "the period of the long-term strategy for regional haze." This approach is consistent with PacifiCorp's December 22, 2014 comment letter (pages 6 – 7).

Response: DAQ has carefully considered when to make the closure of the Carbon Plant enforceable in light of the possibility that the Supreme Court could overturn or stay the MATS rule later this year. The Carbon Plant was closed on April 14, 2015 due to the difficulty and expense of complying with the MATS rule, but the plant could legally be reopened under its existing operating permit if the MATS rule were overturned. DAQ recommended making the closure effective under the RH SIP on August 15, 2015. This date was chosen because it was shortly after the date when the rule would become effective and the requirement could not be retroactive under Utah's rules. After considering PacifiCorp's comment, DAQ still recommends making the closure enforceable on August 15, 2015. The alternative measures were determined to provide greater reasonable progress than BART in part based on the early reductions that have been achieved under Utah's RH SIP. No change has been made to the proposal as a result of this comment.

Alternative to BART – Emission Reductions Surplus

61. [PacifiCorp] ***§51.308(e)(2)(vi)*** – Utah properly concluded that the NOx, SO_2 and PM emissions reductions resulting from the retirement of Carbon Unit 1 and Unit 2, and the NOx emission reductions resulting from Hunter Unit 3, "are surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP." Because Utah determined the baseline date of the SIP to be 2002, and because the emission reductions associated with Carbon Unit 1 and Unit 2, and Hunter Unit 3, will occur after that date, the resulting emission reductions satisfy the surplus requirement. *See* Staff Review, Section X, pages 20 - 22. Utah's actions here are consistent with EPA's actions in other states. *See e.g.*, 79 Fed. Reg. at 33,441-42; 79 Fed. Reg. at 56,328.

Response: The references to EPA's actions in other states have been added as footnote in section X of the Staff Review.

62. [EPA] Include in the documentation whether or not reductions at the Carbon power plant are necessary for other states' Class I areas to meet their reasonable progress goals. That is, describe whether or not the WRAP assumed any reductions from Carbon for the 2018 preliminary reasonable progress inventory.

Response: The following information has been added to the Staff Review. The WRAP compiled regional inventories and completed regional modeling to support the development of RH SIPs in the western states. For all of these analyses, WRAP assumed continued operation of the Carbon plant. There were two projected inventories that were used by western states depending on when their SIPs were completed: PRP18a and PRP18b. These inventories assumed BART emission reductions from Hunter Units 1 and 2 and Huntington Units 1 and 2 based on the presumptive BART emission rate established in 40 CFR Part 51 Appendix Y, or actual emissions if lower. As can be seen in the following table, the NOx emissions from the Carbon plant (shown as reductions in the 4th column) are comparable to the WRAP projected inventories while the SO_2 emissions were about 1,200 tons higher than the WRAP projected inventory. However, current SO_2 emissions for the Hunter and Huntington Plant are lower than had been projected so when SO_2 emissions from all 3 plants are combined the total is less than had been

projected by the WRAP. The last column in the table shows that even if the emission reductions from the Carbon Plant and Hunter 3 are excluded, the NOx, SO_2, and PM_{10} emissions are lower than the WRAP projected inventories. The emission reductions from the Carbon Plant and Hunter 3 were not necessary for other states to meet their reasonable progress goals and therefore provide an added benefit for other states.

NOx	PRP18a	PRP18b	Alternative	Reductions Carbon and Hunter 3	Alternative with Reductions Excluded
Carbon	3,366	3,366	0	3,348	3,348
Hunter	15,331	16,503	11,446	1,908	13,354
Huntington	8,251	8,559	7,437		7,437
Total	26,947	28,429	18,883	5,256	24,139

SO_2	PRP18a	PRP18b	Alternative	Reductions Carbon and Hunter 3	Alternative with Reductions Excluded
Carbon	6,824	6,824	0	8,005	8,005
Hunter	6,109	6,350	4,091		4,091
Huntington	3,811	3,955	2,355		2,355
Total	16,744	17,129	6,446	8,005	14,451

PM_{10}	PRP18a	PRP18b	Alternative	Reductions Carbon and Hunter 3	Alternative with Reductions Excluded
Carbon	221	221	0	573	573
Hunter	1,049	1,049	460		460
Huntington	654	654	376		376
Total	1,924	1,924	836	573	1,409

Combined	PRP18a	PRP18b	Alternative	Reductions Carbon and Hunter 3	Alternative with Reductions Excluded
Carbon	10,411	10,411	0	11,926	11,926
Hunter	22,489	23,903	15,997	1,908	17,905
Huntington	12,716	13,169	10,168	0	10,168
Total	45,615	47,482	26,165	13,834	39,999

63. [EPA] We suggest further clarification regarding the state's intent regarding regional haze SIP shut down requirements for the Carbon power plant. We suggest such clarification in light of the discussion included in this section related to the challenges to the EPA's MATS rule before the Supreme Court.

Response: Section X of the staff review has been revised to include the following language: "An enforceable requirement is included in Section IX.H.22 of the SIP to make enforceable the permanent closure of the Carbon Plant by August 15, 2015. This provision will ensure that the substantial emission reductions that are relied upon as part of the alternative strategy will occur if the MATS rule is overturned or delayed."

64. [Conservation Organizations] It is worth noting that each SIPs long-term strategy already must account for emissions reductions expected to be achieved under other CAA requirements. EPA requires that, in developing reasonable progress goals, States should include all air quality improvements that will be achieved by other programs and activities under the CAA and any State air pollution control requirements. Therefore, any reasonable progress goal for a Class I area should reflect at least the rate of visibility improvement expected from the implementation of other 'applicable requirements' under the CAA during the period covered by the long-term strategy." 1999 Regional Haze Rule, 64 Fed. Reg. at 35,733. Allowing state to take credit for any such "applicable requirements" under the CAA in lieu of BART would effectively nullify any reasonable progress requirements over and above BART.

Response: BART is an independent requirement that must be evaluated according to the provisions established in the regional haze rule. The reasonable progress demonstration then accounts for the emission reductions due to BART as well as all other known emission reductions at the time of the demonstration. As described in the response to comment 62, the significant emission reductions due to Utah's 2008 BART determination were included in WRAP's PRP18 and PRP 18b inventories. As further described in the response to comment 62, the additional emission reductions due to the closure of the Carbon Plant and the installation of low-NOx burners on Hunter Unit 3 were not included in those inventories and will provide an even greater reduction in emissions.

The commenter also fails to consider the specific language in 40 CFR 51.308(e)(2)(iv) that allows measures adopted after the baseline date of the SIP (2002 for regional haze purposes) to be accounted for in the alternative measure.

65. [NPS, Conservation Organizations] In modeling the impacts of the "Most Stringent NOx" control scenario and the UT BART Alternative for NOx, UT DAQ had to include SO_2 and PM emissions in addition to NOx emissions from each facility to account for interactions among pollutants and total impacts. However, SO_2 reductions statewide are already being credited under Utah's 2003 Regional Haze SIP and the 40 CFR 51.309 SO_2 Milestone program. Crediting the same SO2 emissions under UT DAQ's NOx BART Alternative appears to be double-counting.

Response: As described in the Staff Review, Utah met the BART requirement for SO_2 as provided under 40 CFR 51.309(d)(4) through the establishment of SO_2 emission milestones with a backstop regulatory

trading program to ensure that SO_2 emissions in the three-state region of Utah, Wyoming, and New Mexico decreased substantially between 2003 and 2018. The final SO_2 milestone in 2018 was determined to provide greater reasonable progress than BART and the overall RH SIP was deemed to meet the reasonable progress requirements for Class I areas on the Colorado Plateau and for other Class I areas. The modeling supporting the RH SIP included regional SO_2 emissions based on the 2018 SO_2 milestone and also included NOx and PM emissions from the Carbon Plant. Actual emissions in the three-state region are calculated each year and compared to the milestones. The 2018 milestone was met seven years early in 2011, and SO_2 emissions have continued to decline. The most recent milestone report for 2013 demonstrates that SO_2 emissions are currently 26% (36,765 tons) lower than the 2018 milestone. For comparison purposes, SO_2 emissions from the Carbon Plant are around 8,000 tons SO_2.

Since 2013 (the most recent year evaluated in the milestone reports), DAQ has not issued any new approval orders that would significantly increase SO_2 emissions, and the Utah $PM_{2.5}$ SIP that was adopted in December 2013 requires further reductions in $PM_{2.5}$ precursors, including SO_2. DAQ is not aware of any significant new sources of SO_2 in Wyoming or New Mexico since 2013 that would increase SO_2 emissions and the commenter has not provided any information that would indicate that SO_2 emissions will increase between now and 2018. The Carbon Plant was fully operational in the years 2011-2013 when the 2018 milestone was initially achieved for those years. Therefore the SO_2 emission reductions from the closure of the Carbon Plant are surplus to what is needed to meet the 2018 milestone established in Utah's RH SIP.

66. [NPS, Conservation Organizations] DAQ modeled the Carbon Plant (which is not BART-eligible) in its Most Stringent NO_x scenario with no additional SO_2 controls despite the Mercury and Air Toxics Standard (MATS) that requires that the Carbon Plant meet an SO_2 limit of 0.2 lb/mmBtu (on a 30-day rolling average) by 4/15/2015 in lieu of controlling hydrochloric acid emissions. The Most Stringent NOx scenario and the BART Alternative should have been modeled as conforming to the MATS rule (using the same emissions for both scenarios). Modeling the current regulatory requirements would result in about 450 lb SO_2/hr emitted instead of the 3,000+ lb SO_2/hr modeled by UT DAQ in its Most Stringent NO_x scenario. Had UT DAQ modeled the allowable MATS SO_2 emissions for the Carbon Plant, for both scenarios to eliminate the double-crediting of SO_2 reductions, the impacts of its Most Stringent NO_x scenario would have been significantly lower, and the impacts of the BART Alternative would have been higher, thus shifting the weight of evidence even more in favor of the Most Stringent NO_x scenario and away from the UT DAQ NO_x BART Alternative.

Response: 40 CFR 51.308(e)(2)(iv) establishes the criteria for when emission reductions due to other requirements may be included as part of an alternative measure. This section requires "a demonstration that the emission reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. " EPA discussed this issue when the alternative to BART requirements were proposed on August 1, 2005.

> "In some cases, emission reductions required to fulfill CAA requirements other than BART...may also apply to some or all BART eligible sources. In such a situation, a State

> may wish to determine whether the reductions thus obtained would result in greater reasonable progress than would the installation and operation of BART at all sources subject to BART which are covered by the program." One prominent example is CAIR. " CAIR would result in emission reductions surplus to CAA requirements as of the baseline date of the SIP defined as 2002 for regional haze purposes), we determined that it was appropriate to treat participation in this program as a potential means of satisfying BART requirements for that source sector." "EPA is...simply allowing States, at their option, to utilize the CAIR cap and trade program as a means to satisfy BART for affected EGUs. This same reasoning would be applicable whenever any requirement other than BART defines the emission reductions requited by the alternative program." (70 FR 44161)

The MATS rule was proposed on May 3, 2011 and finalized on December 21, 2011. Because this requirement occurred well after the 2002 base year for Utah's regional haze SIP, it is clearly surplus and may be credited as part of the alternative program in the same way that CAIR (and later CSPAR) was credited as an alternative to BART. The following language has been added to section X of the Staff Review to provide a more complete explanation: "To make a valid comparison that the "alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP" as required by 40 CFR 51.308(e)(2)(iv) the most stringent NOx scenario includes measures required before the baseline date of the SIP, but does not include later measures that are credited as part of the alternative scenario."

67. [Conservation Organizations] Utah admits that "PacifiCorp could choose to meet the MATS requirements through other measures..." than retirement. Thus, Utah admits that: 1) had PacifiCorp continued to operate the Carbon plant, it would have had to meet MATS requirements; and 2) PacifiCorp would have had to implement "other measures" (i.e., SO2 pollution controls) to continue operating. Despite these admissions, Utah's emission reduction analysis and visibility modeling use false and inflated SO2 emission data from 2012-2013 that ignores the admitted SO2 emission reductions that would have to occur for Carbon to operate into the future. As such, Utah's emission reduction analysis and visibility modeling is inaccurate, and has no basis in reality.

Response: As described in the response to comment 66, the MATS rule was adopted after the 2002 base year of Utah's RH SIP and therefore any emission reductions due to the implementation of the MATS rule are fully creditable under an alternative program. The discussion regarding PacifiCorp's options under the MATS rule addresses the need to make the closure of the Carbon Plant enforceable. The plant is currently closed, but there are no enforceable requirements under Utah's rules that would prevent PacifiCorp from reopening the plant. If the Carbon Plant were to reopen, then PacifiCorp would be required to fully comply with the MATS rule. If the MATS rule is overturned or delayed by the Supreme Court, PacifiCorp could reopen the plant without any changes to their operation. This is why the enforceable requirement has been added to Section IX, Part H.22. Language has been added to section X.B of the Staff Review to further clarify the need for an enforceable requirement to permanently close the Carbon plant.

68. [Conservation Organizations] Utah incorrectly states that PacifiCorp was under no enforceable requirement to permanently close and retire the Carbon units. This statement is factually inaccurate for a number of reasons. First, the requirement to permanently retire Carbon Units 1 and 2 by April 15, 2015 was made enforceable through public service commission filings in several states. The commenter cites several PSC filings. Accordingly, the Carbon retirement (and corresponding emission reductions) is currently enforceable and statements to the contrary in Utah's latest RH SIP are factually and legally erroneous.

Response: PSC filings and orders address cost recovery and are not enforceable under Utah air quality statutes. The closure of the Carbon Plant must be made enforceable through Utah's SIP and through the rescission of the operating permit for the facility before Utah can rely on this closure as part of the alternative program. The enforceable requirement is therefore retained in Section IX.H.22 of the SIP.

69. [Conservation Organizations] Even if PacifiCorp had elected to operate the Carbon units in violation of MATS, the CAA authorizes either EPA or citizens to seek injunctive relief requiring closure of the units or compliance with the MATS emission limits. Thus, Utah's assumption that these units could have defied the law in perpetuity is arbitrary and capricious.

Response: The process outlined by the commenter could occur but has not yet occurred. DAQ could not rely on the possibility of a citizen challenge that would potentially be successful at some uncertain date in the future. The closure of the Carbon Plant must be made enforceable through Utah's SIP and through the rescission of the operating permit for the facility before Utah can rely on this closure as part of the alternative program. The enforceable requirement is therefore retained in Section IX.H.22 of the SIP.

70. [PacifiCorp] Hunter Unit 3 installed LNB/OFA in 2008. Although the 1990 Clean Air Act Amendments include provisions for reducing NO_x emissions, no specific actions were required at Hunter Unit 3. Under the 1990 CAA, Hunter Unit 3 was classified as a "Phase II" unit and required to meet an annual 0.46 lb/MMBtu emission rate by 2000.

Response: DAQ agrees. The Phase II emission limit of 0.46 lb/MMBtu was an enforceable requirement in the approval order for Hunter Unit 3 prior to the modification in 2008 that allowed installation of low NOx burners with the current NOx emission limit of 0.34 lb/MMBtu heat input for a 30-day rolling average.

71. [Conservation Organizations] Similar to the Carbon plant, Utah's projected emission reduction analysis assumes, under the Most Stringent NOx scenario, that Hunter Unit 3 could emit NOx emissions without operating its 2008 low-NOx burners and the corresponding permitted emission limit. There is no evidence supporting Utah's assumption that PacifiCorp plans to, or could, remove its 2008 LNBs and defy the corresponding already-permitted NOx emission limit. Accordingly, the assumptions used in Utah's projected emission reduction analysis have no factual support in the administrative record, are arbitrary, capricious, and contrary to law. In fact, when the proper post-2008 Hunter 3 NOx emission reductions are included in the "Most Stringent NOx" scenario, it becomes clear that Utah's BART alternative does not result in greater emission reductions, or

greater reasonable progress, than would installation of SCR BART controls on the Hunter and Huntington BART units.

Response: The commenter is incorrect. DAQ does not assume that Hunter 3 could operate in violation of its permit. DAQ does account for creditable emission reductions as allowed by the regional haze rule. 40 CFR 51.308(e)(2)(iv) establishes the criteria for when emission reductions due to other requirements may be included as part of an alternative measure. This section requires "a demonstration that the emission reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. " EPA discussed this issue when the alternative to BART requirements was proposed on August 1, 2005.

> "In some cases, emission reductions required to fulfill CAA requirements other than BART...may also apply to some or all BART eligible sources. In such a situation, a State may wish to determine whether the reductions thus obtained would result in greater reasonable progress than would the installation and operation of BART at all sources subject to BART which are covered by the program. " One prominent example is CAIR. " CAIR would result in emission reductions surplus to CAA requirements as of the baseline date of the SIP defined as 2002 for regional haze purposes), we determined that it was appropriate to treat participation in this program as a potential means of satisfying BART requirements for that source sector." "EPA is...simply allowing States, at their option, to utilize the CAIR cap and trade program as a means to satisfy BART for affected EGUs. This same reasoning would be applicable whenever any requirement other than BART defines the emission reductions required by the alternative program." (70 FR 44161)

The installation of low-NOx burners with an emission limit of 0.34 lb/MMBtu heat input for a 30-day rolling average was included in the approval order for Hunter Unit 3 in 2008. Because this requirement occurred well after the 2002 base year for Utah's regional haze SIP it is clearly surplus and may be credited as part of the alternative program in the same way that CAIR (and later CSPAR) was credited as an alternative to BART. The following language has been added to section X of the Staff Review to provide a more complete explanation. "To make a valid comparison that the "alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP" as required by 40 CFR 51.308(e)(2)(iv) the Most Stringent NOx scenario includes measures required before the baseline date of the SIP, but does not include later measures that are credited as part of the alternative scenario." Further clarifying language stating that the emission reductions at Hunter Unit 3 are clearly surplus under 40 CFR 51.308(e)(2)(vi) has been added to Section X.C of the Staff Review.

Cost

72. [PacifiCorp] PacifiCorp also notes that the Alternative Measure not only produces greater reasonable progress, including lower emissions and improved visibility, but it does so at a capital cost savings to PacifiCorp and its customers of over $700 million as compared to the most stringent NOx technology and limits. The importance of this cannot be overstated. In other words, the Alternative Measure achieves better visibility improvements than would be achieved by requiring SCR as BART at the Units, and at a significantly lower cost. This presents a classic "win/win" scenario – visibility proponents win because the Alternative Measure results in greater reasonable progress and PacifiCorp customers win because that greater reasonable progress is achieved at a much lower price compared to SCR.

Response: The following discussion of the cost savings has been added to the weight of evidence discussion in the Staff Review in response to this comment.

PacifiCorp noted in their comments on the proposed SIP revision that the Alternative Measure not only produces greater reasonable progress, including lower emissions and improved visibility, but it does so at a significant capital cost savings to PacifiCorp and its customers as compared to the most stringent NOx technology and limits. While DAQ has not officially determined the cost of installing SCR on the four units, it is clear that it would be a significant cost. On the other hand, the Carbon Plant has already been closed due to the high cost of complying with the MATS rule. The costs to Utah rate payers (and those in other states served by PacifiCorp) to replace the power generated by the Carbon Plant have already occurred; there will be no additional cost to achieve the co-benefit of visibility improvement. In other words, the Alternative Measure achieves better visibility improvements than would be achieved by requiring SCR as BART at the four EGUs, and at a significantly lower cost. This presents a classic "win/win" scenario –the Alternative Measure results in greater reasonable progress and that greater reasonable progress is achieved at a much lower price compared to SCR. Cost is one of the factors listed in section 169A(g)(2) that should be considered when determining BART.

73. [PacifiCorp] Some of the information contained in PacifiCorp's July 12, 2012 letter to EPA regarding system-wide impacts, which also is included among the Technical Support documents, is no longer current, and as such PacifiCorp requests that the Division not rely on that letter for purposes of the SIP Revision.

Response: The July 12, 2012 letter has been removed from the TSD as requested. DAQ notes, however, that the broader issue of system-wide impacts is still valid and would be a consideration in a 5-factor analysis. Because Utah has chosen to use an alternative to BART approach under 40 CFR 51.308(e)(2), the 5-factor analysis that was proposed in October 2014 was not finalized.

74. [Individual] Rocky Mountain Power complains that it would cost $170M/unit to upgrade these two plants and that the upgrades would result in "substantial expense to consumers". Not true! The $340M cost to upgrade those two plants would result in a one-time charge to each of RMP's 1.7M

customers of only $200! If spread over time - 10 years, for example - the charges would be insignificant and unnoticed by RMP's ratepayers.

Response: Because Utah has chosen to use an alternative to BART approach under 40 CFR 51.308(e)(2) the 5-factor analysis that was proposed in October 2014 was not finalized. Therefore a final cost was not determined. However, while there may be different estimates of the final cost of installing SCR, all of the estimates show that there is a significant cost to install these controls. As noted by PacifiCorp in comment 72, the alternative provides a win/win situation because the benefits are achieved without the additional expense of post-combustion controls. The costs to Utah rate payers and those in other states served by PacifiCorp to replace the power generated by the Carbon Plant have already occurred; there will be no additional cost to achieve the co-benefit of visibility improvement.

75. [NPS] In its August 2014 BART update submittal, PacifiCorp noted that SCR can achieve 0.05 lb/mmBtu on an annual average basis, but used 0.07 lb/mmBtu in its cost-effectiveness calculations; underestimation of the potential emission reductions biases the cost-effectiveness analysis against SCR. UT DAQ assumed that these EGUs would meet 0.05 lb/mmBtu on an annual average.

Response: Because Utah has chosen to use an alternative to BART approach under 40 CFR 51.308(e)(2) the 5-factor analysis that was proposed in October 2014 was not finalized. Therefore a final cost/ton of NOx reduced was not finalized. This comment is not relevant to the current proposal.

76. [NPS] The commenter disagreed with the cost assumptions that PacifiCorp provided regarding the cost of installing SCR. The commenter cited a number of instances in the analysis where they believed the costs were overestimated. The commenter estimated the average cost-effectiveness of LNB/OFA + SCR = $2,800 - $3,000/ton of NO_x removed, and the incremental cost of adding SCR to LNB/OFA = $4,300 - $5,300/ton. These estimates are in the range of cost-effectiveness values accepted by many states and by EPA. BART is not necessarily the most cost-effective solution. Instead, it represents a broad consideration of technical, economic, energy, and environmental (including visibility improvement) factors. It appears that $4,000 - $8,000/ton represents the typical range of cost/ton thresholds. In this context, both the PacifiCorp and NPS cost estimates for SCR appear cost-effective.

Response: Because Utah has chosen to use an alternative to BART approach under 40 CFR 51.308(e)(2) the 5-factor analysis that was proposed in October 2014 was not finalized. Therefore a final cost/ton of NOx reduced was not finalized. However, while there may be different estimates of the final cost of installing SCR, all of the estimates show that there is a significant cost to install these controls. As noted by PacifiCorp in comment 72, the alternative provides a win/win situation because the benefits are achieved without the additional expense of post-combustion controls. The costs to Utah rate payers and those in other states served by PacifiCorp to replace the power generated by the Carbon Plant have already occurred; there will be no additional cost to achieve the co-benefit of visibility improvement.

77. [Conservation Organizations] Our previous comment letter provided cost estimates for Hunter Units 1 and 2 and Huntington Units 1 and 2 demonstrating that SCR on these units would be very cost effective. The control costs are also significantly lower than those EPA has found reasonable in other

states. Specifically, the cost effectiveness of SCR on these units is in the range of $2,222-2,276/ton of NOx removed[5]. The cost effectiveness for SCR on these units is much less than at other coal units in the west where EPA has required SCR as BART.

Response: Because Utah has chosen to use an alternative to BART approach under 40 CFR 51.308(e)(2) the 5-factor analysis that was proposed in October 2014 was not finalized. Therefore a final cost/ton of NOx reduced was not finalized. However, while there may be different estimates of the final cost of installing SCR, all of the estimates show that there is a significant cost to install these controls. As noted by PacifiCorp in comment 72, the alternative provides a win/win situation because the benefits are achieved without the additional expense of post-combustion controls. The costs to Utah rate payers and those in other states served by PacifiCorp to replace the power generated by the Carbon Plant have already occurred; there will be no additional cost to achieve the co-benefit of visibility improvement.

Section XX.D.6 SIP Language

78. [PacifiCorp] PacifiCorp suggests that Utah remove the word "existing" from SIP Section XX.D.6.c because the "existing" technology referred to by Utah no longer exists. This is because, as noted in the Staff Review at page 4, the first generation LNB technology already has been replaced with Alstom TSF 2000TTM LNBs, including the installation of two elevations of separated overfire air, which results in even greater NO_x emission reductions.

Response: The word existing has been removed.

79. [EPA] Section 6.d., BART Summary, p. 25-26: BART emission "rates" should be referred to as emission "limits" in the discussion preceding Table 5 and in the Table 5 title. Also the averaging period for each emission limit included in Table 5 should be specified. In Section 6.e., BART emission "rates" should be referred to as emission "limits."

Response: The correction has been made as requested.

80. [EPA] The discussion in Section 6.d. and the information in Table 5 includes information about the four Hunter and Huntington units meeting the presumptive limits; and since it is not germane to SIP analysis and demonstration, we recommend removing it.

Response: DAQ disagrees with the commenter. The fact that the four EGUs meet the presumptive limits for NOx established by EPA in 40 CFR Part 51, Appendix Y, independently of the alternative measures is important because the alternative was not intended to exempt these units from any emission reduction requirements, as implied by other commenters. Instead, the alternative achieves the presumptive emission rate and also achieves greater reasonable progress than the most stringent NOx technology. DAQ believes that meeting both requirements strengthens the alternative approach for both NOx and SO_2.

[5] The cost estimates included in the commenter's previous letter regarding the October 2014 proposal were average costs that include the installation of low-NOx burners with overfire air that has already been installed on the four EGUs rather than the incremental cost to install SCR.

Part H Enforceable Limitations

81. [PacifiCorp, EPA] The NOx emission limit associated with Hunter Unit 3 appears to have been inadvertently left out of SIP Section IX.H.22.a.

Response: DAQ agrees with this comment. The missing NOx emission limit will be included in SIP Section IX.H.22.a. For reference, this limit is as follows:

iii NOx Limitation on Unit #3

A. Emissions of NOx shall not exceed 0.34 lb/MMBtu heat input for a 30-day rolling average.
B. Measuring of all NOx emissions shall be performed by CEM.

82. [EPA] H.21.f.i.A., B., and C., p. 2: Please replace "or other EPA-approved methods acceptable to the Director" in all three places with "or the most recent version of the EPA-approved test method if approved by the Director."

Response: DAQ agrees with this comment with reservations. The original intent of the language quoted by the commenter was to allow for the use of an alternative testing method in the event that such proved necessary to obtain more accurate emissions data for a particular pollutant. For example, the current reference method for determination of back-half condensable particulate emissions is Method 202. This method cannot be used when a source has a "wet stack" or one is which water droplets are present. The fallback testing method is typically to use reference Method 5 and estimate condensable emissions based on emission factors. Yet this methodology comes with an obvious loss of accuracy.

Although DAQ does not anticipate or expect that any alternatives to the testing methods listed in SIP Section IX.H.21 will be required for the limited number of sources listed in Section IX.H.22, the original intent remains the same. While it could be argued that a larger list of alternative test methods could be included in Section IX.H.21, DAQ cannot anticipate every possible alternative or new testing methodology that might be developed over the lifetime of the SIP. Through the removal of the word "other" in its suggested language, the commenter does not allow for alternatives to the existing choices listed in IX.H.21. Instead, the suggested language only allows for the most recently approved version of those same test methods already listed in Section IX.H.21.

However, given that the sources listed in Section IX.H.22 of the SIP represent only one type of source (coal-fired boilers), all owned and operated by a single entity; and given that these sources have existed for a number of years, with a long history of established emission testing using those methods already listed in Section IX.H.21 – DAQ agrees to the language change requested by the commenter. Paragraphs H.21.f.i.A., B., and C. will all be changed as follows:

f. Stack Testing:

i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.22 shall be performed in accordance with the following:

A. *Sample Location: The testing point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or the most recent version of the EPA-approved test method if approved by the Director.*

B. *Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2 or the most recent version of the EPA-approved test method if approved by the Director.*

C. *Particulate (PM): 40 CFR 60, Appendix A, Method 5B, or the most recent version of the EPA-approved test method if approved by the Director. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. The back half condensables shall also be tested using Method 202. The back half condensables shall not be used for compliance demonstration but shall be used for inventory purposes.*

83. [EPA] To ensure clarity and enforceability, we suggest revising H.22.c.i.A. to state "The owner/operator shall permanently cease operation of Carbon...".

Response: DAQ agrees with this comment. The addition of the suggested language adds clarification that the Carbon plant is being permanently shut down. SIP Section IX.H.22.c.i.A shall be revised to say the following:

c. *PacifiCorp Carbon*

i. *Conditions on Units #1 and #2*

A. *The owner/operator shall permanently close and cease operation of Carbon Units #1 and #2 by August 15, 2015.*

84. [EPA] Please revise H.22.c.i.B. to clearly describe the procedure that will be followed. The procedure should indicate that the owner/operator shall request recission of the Operating Permit by a date specified in the SIP and that the state will rescind the permit by no later than a reasonable date, which is also specified in the SIP, after the request is received.

Response: DAQ agrees with this comment. The commenter suggests revising SIP Section IX.H.22.c.i.B to describe the procedure that will be followed in the rescission of the Operating Permit. Specifically, the suggestion is that a timeline be established whereby the owner/operator shall request rescission[sic] by a specific listed date, and that the state shall then rescind the permit by a second listed date.

This comment is directly related to comment #85, which requested that the owner/operator notify the state when it ceased operations at the Carbon Plant. In keeping with the dates already outlined in the existing language of SIP Section IX.H.22.c.i.A. and B. the following changes will be made:

c. *PacifiCorp Carbon*

i. *Conditions on Units #1 and #2*

A. The owner/operator shall permanently close and cease operation of Carbon units #1 and #2 by August 15, 2015. The owner/operator shall notify the Director of the permanent closure of the Carbon Plant by no later than September 15, 2015.

B. The owner/operator shall request a rescission of Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 by no later than September 15, 2015.

C. *Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 shall be rescinded by no later than December 15, 2015.*

85. [EPA] Specify whether the owner/operator [of Carbon] is required to notify the state when they cease operations.

Response: DAQ agrees with this comment. This comment requests that the owner/operator be required to notify the state when it ceases operations at the Carbon Plant. Please see the response to comment #84 for additional details, as comment #84 also addresses the same change to Section H.22.c.i.B.

86. [EPA] It appears that the Carbon power plant has at least one AO DAQE-01000810005-08, which is referenced in the Title V permit on page 3. Provisions should be added to the SIP that specify that all approval orders for the Carbon power plant must also be rescinded, including the procedures and associated deadlines.

Response: DAQ agrees with this comment, with one correction. The commenter notes that the Carbon Power Plant has one active AO, which must also be rescinded as part of the plant closure process. This AO is referenced in the current Operating Permit for the Carbon Plant. However, the referenced AO is misidentified by the Operating Permit. The correct AO identifier is DAQE-AN0100810005-08. As part of the plant closure and permit rescission process, the AO will be included with the Operating Permit in the revised language of SIP Section IX.H.22.c.i. This revised language is included below:

c. PacifiCorp Carbon

i. Conditions on Units #1 and #2

A. The owner/operator shall permanently close and cease operation of Carbon units #1 and #2 by August 15, 2015. The owner/operator shall notify the Director of the permanent closure of the Carbon Plant by no later than September 15, 2015.

B. The owner/operator shall request a rescission of Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 by no later than September 15, 2015.

C. *Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 shall be rescinded by no later than December 15, 2015.*

Effective Rule

R307-110-28
DAR No. 39166, AMD
Effective: June 4, 2015

CERTIFIED A TRUE COPY
Kenneth A. Hansen, Director

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on June 3, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Enactment or Last Substantive Amendment: June 4, 2015
Notice of Continuation: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(e)

!--dar--

R307-110-17
DAR No. 39167, AMD
Effective: June 4, 2015

CERTIFIED A TRUE COPY
Kenneth A. Hansen, Director

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on June 3, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Enactment or Last Substantive Amendment: June 4, 2015
Notice of Continuation: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(e)

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Utah State Implementation Plan

Section XX

Regional Haze

Addressing Regional Haze Visibility Protection for the Mandatory Federal Class I Areas Required Under 40 CFR 51.309

Adopted by the Air Quality Board
June 3, 2015

6. Best Available Retrofit Technology (BART) Assessment for NO_x and PM.

a. Regional Haze Rule BART Requirements

Pursuant to 40 CFR 51.309(d)(4)(vii), certain major stationary sources are required to evaluate, install, operate and maintain BART technology or an approved BART alternative for NO_x and PM emissions. The State of Utah has chosen to evaluate BART for PM under the case-by-case provisions of 40 CFR 51.308(e)(1) and BART for NOx through alternative measures under 40 CFR 51.308(e)(2). BART for SO_2 is addressed through an alternative program under 40 CFR 51.309 that is described in Part E of this plan.

b. BART for Particulate Matter

EPA issued guidelines for case-by-case BART determinations on July 6, 2005 that are codified in Appendix Y to 40 CFR Part 51. These guidelines establish a three step process.

- States identify sources which meet the definition of BART eligible
- States determine which BART eligible sources are "subject to BART"
- For each source subject to BART States identify the appropriate control technology.

(1) BART-Eligible Sources.

BART-eligible sources are those sources that fall within one of 26 specific source categories, were built during the 15-year window of time from 1962 to 1977, and have potential emissions of at least 250 tons per year of any visibility impairing air pollutant (40 CFR 51.301). Pursuant to 40 CFR 51.308 (e)(1)(i) a State is required to list all BART-eligible sources within the State.

Four BART-eligible electric generating units have been identified in the State of Utah: PacifiCorp's Hunter Units 1 and 2 and Huntington Units 1 and 2. The units are located at fossil-fuel fired steam electric plants of more than 250 million Btu per hour heat input, one of the 26 specific BART source categories. The units have potential emissions greater than 250 tons per year of a visibility impairing pollutant. The units had commenced construction within the BART time frame of August 7, 1962 to August 7, 1977.

Table 3. BART-Eligible Sources in Utah.

SOURCE	UNIT ID	SERVICE DATE	NET DEPENDABLE CAPACITY (MWn)	BART CATEGORY	COAL TYPE	BOILER TYPE
Hunter	1	1978	430	Fossil fuel fired	Bituminous	Tangential
Hunter	2	1980	430	Fossil fuel fired	Bituminous	Tangential
Huntington	1	1977	430	Fossil fuel fired	Bituminous	Tangential
Huntington	2	1974	430	Fossil fuel fired	Bituminous	Tangential

Note: Hunter Unit 3 commenced construction after 1977 and is therefore not BART-eligible.

(2) Sources Subject to BART

Pursuant to 40 CFR 51.308(e)(1)(ii) the State is required to determine which BART-eligible sources are also "subject to BART." BART-eligible sources are subject to BART if they emit any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.

PacifiCorp's Hunter Units 1 and 2 and Huntington Units 1 and 2 were determined by the State to be subject to BART. The State utilized the technical modeling services of the WRAP Regional Modeling Center (RMC). Modeling was performed according to the RMC modeling protocols[1]. For the WRAP BART exemption screening modeling, the RMC followed the EPA BART Guidelines in 40 CFR 51, Appendix Y and the applicable CALMET/CALPUFF modeling guidance (e.g., IWAQM, 1998; FLAG, 2000; EPA, 2003c) including EPA's March 16, 2006 memorandum: "Dispersion Coefficients for Regulatory Air Quality Modeling in CALPUFF".[2]

The basic assumptions of the WRAP BART CALMET/CALPUFF modeling protocols are as follows:

- Three years of modeling (2001, 2002 and 2003) were used.
- Visibility impacts due to emissions of SO_2, NO_x and primary PM emissions were calculated

[1] CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States

[2] Atkinson and Fox, 2006

- Visibility was calculated using the Original IMPROVE equation and Annual Average Natural Conditions.
- The effective range of CALPUFF modeling was set at 300km from the sources
- For pre-control modeling, maximum 24-hour average actual emissions from the Acid Rain database were used in CALPUFF model.

According to 40 CFR Part 51, Appendix Y, a BART-eligible source is considered to "contribute" to visibility impairment in a Class I area if the modeled 98th percentile change in deciviews is equal to or greater than the "contribution threshold." The State of Utah evaluated BART exemption screening modeling results at the EPA-suggested contribution threshold of 0.5 deciviews within a 300 Km radius of the BART-eligible sources.[3] BART-eligible sources Hunter Unit 1, Hunter Unit 2, Huntington Unit 1, and Huntington Unit 2 had a modeled impact greater than the threshold level of 0.5 change in deciviews in at least one of the seven Class I areas within a 300 km radius of the sources.

[3] WRAP RMC BART Modeling for Utah Draft #6 April 21, 2007

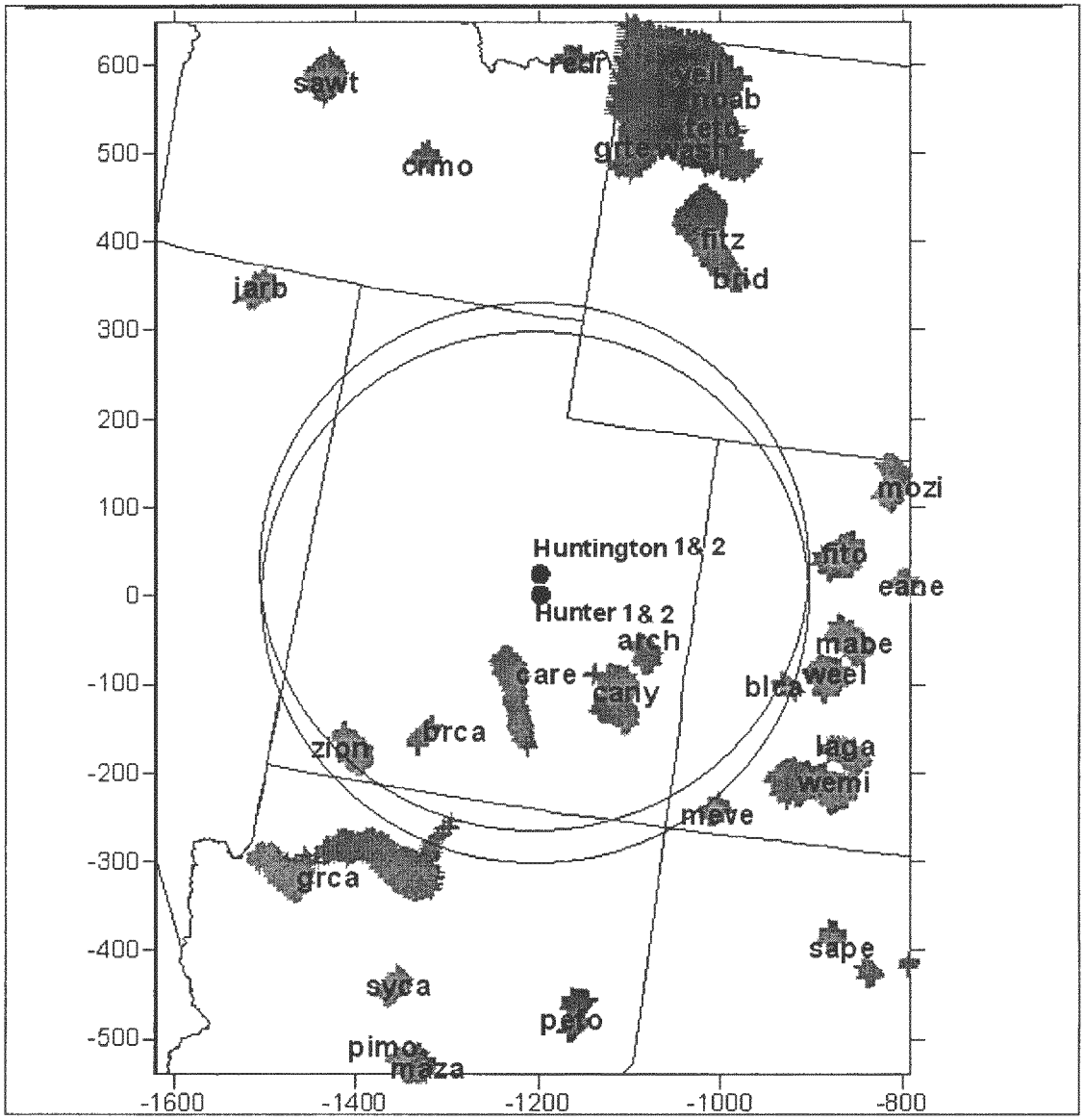

Figure 4. Relationship between Utah potential BART-eligible sources and Class I areas. Hunter Units 1 and 2 and Huntington Units 1 and 2 modeled separately at maximum 300 km.

Table 4. Subject to BART Modeling

	Subject to BART Modeling - 98th Percentile 3 year average Delta Deciview							
	Capitol Reef	Canyonlands	Arches	Bryce Canyon	Zion	Grand Canyon	Black Canyon Gunnison	Mesa Verde
Hunter 1	2.13	1.87	1.53	0.55	0.46	0.59	0.60	0.53
Hunter 2	1.89	1.62	1.36	0.47	0.41	0.52	0.53	0.47
Huntington 1	1.92	1.64	1.39	0.48	0.43	0.55	0.56	0.48
Huntington 2	2.43	2.26	1.89	.091	.078	.099	1.14	0.91

(3) BART Analysis

As required under 51.308 (e)(1)(A) the determination of BART must be based on an analysis of the best system of continuous emission control technology available. In the analysis the State must take in to account five factors:

- Available technology
- Costs of compliance
- Energy and non-air quality environmental impacts
- Existing control equipment and the remaining useful life of the facility
- The degree of improvement in visibility reasonably anticipated to result from the use of such technology

In 2008, Utah determined that BART for PM was the replacement of existing electrostatic precipitators with pulse-jet fabric filter baghouses with a PM emission limit of 0.015 lb/MMBtu at all four EGUs that were subject-to-BART. PacifiCorp installed the control technology, as required, and significant emission reductions of PM were achieved. On December 12, 2012, the EPA disapproved Utah's BART determination for PM after concluding that Utah did not submit an adequate 5-factor analysis as required by the BART Rule. In June 2012, PacifiCorp provided a new 5-factor analysis for each of the four subject to BART EGUs. On August 4, 2014, PacifiCorp provided additional information to supplement that analysis. DAQ reviewed the analysis, and determined that the required controls for PM were the most stringent controls available.

(4) BART Determination for PM

Appendix Y allows a streamlined 5-factor analysis when the most stringent controls are already required.

> "If you find that a BART source has controls already in place which are the most stringent controls available (note that this means that all possible improvements to any control devices have been made), then it is not necessary to comprehensively complete each following step of the BART analysis in this section. As long as these most stringent controls available are made federally enforceable for the purpose of implementing BART for that source, you may skip the remaining analyses in this section, including the visibility analysis in step 5. Likewise, if a source commits to a BART determination that consists of the most stringent controls available, then there is no need to complete the remaining analyses in this section." (40 CFR Part 51, Appendix Y, Section D.9)

Because the most stringent technology is in place and the PM emission limits have been made enforceable in SIP Section IX Part H.21 and H.22, no further analysis is required.

c. BART for NOx

BART for NOx is addressed through alternative measures as provided under 40 CFR 51.308(e)(2). The following emission reduction measures are required, and are made enforceable through emission limits established in Section IX, Part H.21 and H.22 of the State Implementation Plan.

- PacifiCorp Hunter Units 1 and 2 and Huntington Units 1 and 2: The replacement of first generation low-NO_x burners with Alstom TSF 2000TM low-NO_x firing system and installation of two elevations of separated overfire air with an emission limit of 0.26 lb/MMBtu.

- PacifiCorp Hunter Unit 3 (not subject-to-BART): The replacement of first generation low-NOx burners with improved low-NOx burners with overfire air with an emission limit of 0.34 lb/MMBtu.

- PacifiCorp Carbon Units 1 and 2 (not subject-to-BART): PacifiCorp shall permanently retire Carbon Units 1 and 2 by August 15, 2015.

40 CFR 51.308(e)(2) requires an analysis to demonstrate that the alternative measures achieve greater reasonable progress than would be achieved through the installation and operation of BART. This demonstration is included in the TSD[4]. Combined emissions of NOx, SO_2, and PM_{10} will be 2,876 tons/yr lower under the alternative than the most-stringent BART scenario for NOx, visibility will improve on a greater number of days under the alternative, and the average deciview impairment and 90th percentile deciview impairment will be better under the alternative.

d. BART Summary

The BART emission limits for NOx and PM are summarized in Table 5. While Utah has chosen to meet the NOx BART requirement through alternative measures established in Section XX Part D.6 of the SIP, and the SO_2 BART requirement through an alternative to BART program established in Section XX Part E of the SIP, the enforceable emission limits for both NOx and SO_2 established in the approval orders and in the SIP for the four EGUs also meet the presumptive emission rates for both NOx and SO_2 established in Appendix Y independently of the alternative programs.

[4] Review of 2008 BART Determination and Recommended Alternative to BART for NOx, Utah Division of Air Quality, February 13, 2015.

Table 5. Emission Limits for the Retrofitted Hunter and Huntington Units

Units	Utah Permitted Limits			Presumptive BART Rates[5]	
	SO_2 lb/MMBtu	NOx lb/MMBtu	PM lb/MMBtu	SO_2 lb/MMBtu	NO_x lb/MMBtu
Hunter 1	0.12	0.26	0.015	0.15	0.28
Hunter 2	0.12	0.26	0.015	0.15	0.28
Hunter 3		0.34			
Huntington 1	0.12	0.26	0.015	0.15	0.28
Huntington 2	0.12	0.26	0.015	0.15	0.28

e. Schedule for Installation of Controls

Pursuant to 51.308(e)(1)(C)(iv) each source subject to BART is required to install and operate BART no later than 5 years after approval of the implementation plan, and pursuant to 51.308(e)(2)(E)(3) all alternative measures must take place within the first planning period. Table 6 shows that the required schedule will be met for all units.

Table 6. Installation Schedule

Source	Notice of Intent Submitted	Permit Issued	In Service Date
Hunter 1	June 2006	March 2008	Spring 2014
Hunter 2	June 2006	March 2008	Spring 2011
Hunter 3			Summer 2008
Huntington 1	April 2008	August 2009	Fall 2010
Huntington 2	October 2004	April 2005	Dec 2006
Carbon 1			Shut down August 2015
Carbon 2			Shut down August 2015

Utah's long-standing Prevention of Significant Deterioration (PSD) permitting program (SIP Section VII and R307-405), New Source Review permitting program (SIP Section II and R307-401) and Visibility program (SIP section XVII and R307-406) will continue to protect Class I area visibility by ensuring that the BART emission limits established in Part H.21 and H.22 of this plan are maintained, requiring best available control technology for new sources, and assuring that there is not a significant degradation in visibility at Class I areas due to new or modified major sources.

[5] 40 CFR Part 51 Appendix Y Guidelines for BART Determinations under the Regional Haze Rule (70 Federal Register 39135)

Utah State Implementation Plan

Emission Limits and Operating Practices

Section IX, Part H

Adopted by the Air Quality Board June 3, 2015

H.21. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements

a. Except as otherwise outlined in individual conditions of this Subsection IX.H.21 listed below, the terms and conditions of this Subsection IX.H.21 shall apply to all sources subsequently addressed in Subsection IX.H.22. Should any inconsistencies exist between these two subsections, the source specific conditions listed in IX.H.22 shall take precedence.

b. The definitions contained in R307-101-2, Definitions and R307-170-4, Definitions, apply to Section IX, Part H. In addition, the following definition also applies to Section IX, Part H.21 and 22:

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the boiler. It is not necessary for fuel to be combusted for the entire 24-hour period.

c. The terms and conditions of R307-107-1 and R307-107-2 shall apply to all sources subsequently addressed in Subsection IX.H.22.

d. Any information used to determine compliance shall be recorded for all periods when the source is in operation, and such records shall be kept for a minimum of five years. All records required by IX.H.21.c shall be kept for a minimum of five years. Any or all of these records shall be made available to the Director upon request.

e. All emission limitations listed in Subsections IX.H.22 shall apply at all times, unless otherwise specified in the source specific conditions listed in IX.H.22.

f. Stack Testing:

   i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.22 shall be performed in accordance with the following:

A. Sample Location: The testing point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or the most recent version of the EPA-approved test method if approved by the Director.

B. Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2, or the most recent version of the EPA-approved test method if approved by the Director.

C. Particulate (PM): 40 CFR 60, Appendix A, Method 5B, or the most recent version of the EPA-approved test method if approved by the Director. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. The back half condensables shall also be tested using Method 202. The back half condensables shall not be used for compliance demonstration but shall be used for inventory purposes.

D. Calculations: To determine mass emission rates (lb/hr, etc.) the pollutant concentration as determined by the appropriate methods above shall be multiplied by the volumetric flow rate and any necessary conversion factors to give the results in the specified units of the emission limitation.

E. A stack test protocol shall be provided at least 30 days prior to the test. A pretest conference shall be held if directed by the Director.

g. Continuous Emission and Opacity Monitoring.

i. For all continuous monitoring devices, the following shall apply:

A. Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (d) 40 CFR 60.13, the owner/operator of an affected source shall continuously operate all required continuous monitoring systems and shall meet minimum frequency of operation requirements as outlined in R307-170 and 40 CFR 60.13.

B. The monitoring system shall comply with all applicable sections of R307-170; 40 CFR 13; and 40 CFR 60, Appendix B – Performance Specifications.

C. For any hour in which fuel is combusted in the unit, the owner/operator of each unit shall calculate the hourly average NOx concentration in lb/MMBtu.

D. At the end of each boiler operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day and the previous 29 successive boiler operating days.

E. An hourly average NOx emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in R307-170, is acquired by the owner/operator for both the pollutant concentration monitor (NOx) and the diluent monitor (O2 or CO2).

H.22. Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology

a. PacifiCorp Hunter

i. Particulate Limitations on Units #1 and #2

A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.

B. Stack testing for the emission limitation shall be performed each year on each boiler.

C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.

ii. NOx Limitations on Units #1 and #2

A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

iii. NOx Limitation on Unit #3

A. Emissions of NOx shall not exceed 0.34 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

b. PacifiCorp Huntington

i. Particulate Limitations on Units #1 and #2

A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.

B. Stack testing for the emission limitation shall be performed each year on each boiler.

C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.

ii. NOx Limitations on Units #1 and #2

A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.

B. Measuring of all NOx emissions shall be performed by CEM.

c. PacifiCorp Carbon

i. Conditions on Units #1 and #2

A. The owner/operator shall permanently close and cease operation of Carbon units #1 and #2 by August 15, 2015. The owner/operator shall notify the Director of the permanent closure of the Carbon Plant by no later than September 15, 2015.

B. The owner/operator shall request a rescission of Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 by no later than September 15, 2015.

C. Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 shall be rescinded by no later than December 15, 2015.

Certification

I, Ryan M. Stephens, Rules Coordinator for the Utah Division of Air Quality, do hereby certify that the public comment period and public hearing held to receive comments regarding R307-110-28 (DAR 39166); R307-110-17 (DAR 39167); SIP Subsection XX; and SIP Subsection IX.H was held in accordance with the information provided in the published public notices and as defined in Utah Code 19-2-109. These rules were adopted by the Air Quality Board on June 3, 2015.

Signed this 11 day of June 2015.

Ryan M. Stephens